

Political Activity Guidance for Senate Confirmed Officials at DoD

General Information about the Hatch Act

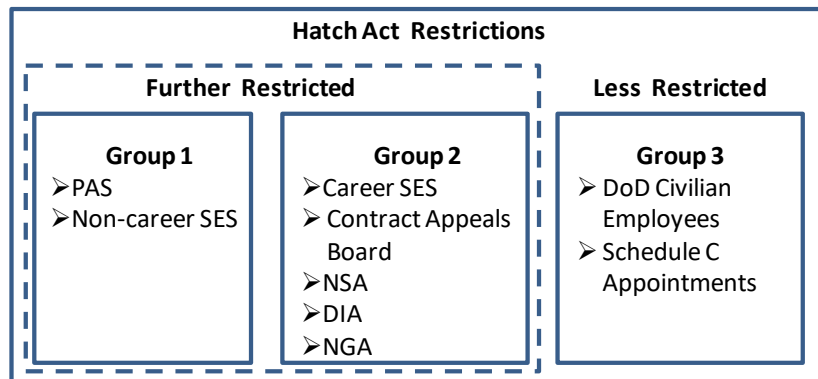
Q. What is the Hatch Act?

A. Passed in 1939, the Hatch Act restricts the political activity of civilian employees in the executive branch of the federal government, District of Columbia government, and some state and local employees who work in connection with federally funded program. The Act was significantly amended in 1993, to allow most Federal employees to engage in certain types of political activities while in their personal capacity.

Q. Are the Restrictions on participating in partisan political activities the same for all DoD civilian employees?

A. No, the restrictions are not the same. At DoD, there are 2 sets of rules for 3 groups of employees. The first set of restrictions applies to: (1) individuals appointed by the President and confirmed by the Senate (PAS) and individuals serving in non-career SES positions, who are further restricted by DoD policy; and

(2) career members of the SES, contract appeals board members, and all employees of the National Security Agency (NSA), the Defense Intelligence Agency (DIA), and the National Geo-Spatial-Intelligence Agency (NGA). The second, and more lenient set of restrictions, applies to all other employees (including Schedule C political appointees). Employees in Groups 1 and 2 are prohibited from taking an active part in partisan political management or political campaigns and are referred to as “Further Restricted” employees.



Q. Why are the Hatch Act restrictions of the political appointees at certain agencies more restrictive than at other agencies?

A. When the Hatch Act was amended in 1993, the President delegated to the Secretaries of DoD, Justice and State (and later Homeland Security) the authority to further regulate the political activity of political appointees. The Secretaries of those agencies individually issued policy guidance that implemented restrictions regarding political activity for the political appointees in their respective agencies. At DoD, PAS and non-career SES officials were restricted from engaging in political activities, while the activities of Schedule C employees were not further restricted. In contrast, all political appointees (including Schedule C employees) at State, Justice and DHS, are prohibited from participating in political activity. In the remainder of the Executive Branch agencies all political appointees (PAS, non-career SES and Schedule C) are permitted to engage in certain types of political activity.

Q. What is political activity?

A. For purposes of the Hatch Act, political activity is defined as an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group. Examples of political activities include: volunteering for the campaign of a candidate for partisan political office, serving as an officer of a political party or club, serving as a delegate to a political convention, or distributing campaign literature for a candidate for partisan political office.

Q. May PAS officials assist the campaign of a candidate running for partisan political office?

A. No. Under longstanding DoD policy, PAS officials are prohibited from taking an active part in partisan political management or political campaigns. Specifically, this means that these employees are prohibited from engaging in any political activity which is "in concert" with a political party, partisan political group or candidate for partisan political office. "In concert" activity is any activity that is sponsored or supported by a political party, partisan political group or candidate for partisan political office. For example, PAS officials are prohibited from: writing speeches or performing research on political issues for a partisan campaign; speaking at a campaign rally for a candidate for partisan political office; soliciting, accepting or receiving political contributions; holding office in a political party; hosting a fundraiser for a candidate for partisan political office; serving as a delegate to a political party convention or doing any type of volunteer work for a candidate for partisan political office.

Q. May PAS officials make a contribution to the campaign of a partisan candidate, or to a political party or organization?

A. Yes. All DoD employees may contribute to the campaign of a candidate for partisan political office or to a political party or partisan political group, provided that the employees do not do make contributions while on duty or in a Federal building, or while using Government equipment or resources.

Q. May PAS officials place campaign signs in their yards or display candidate bumper stickers?

A. Yes. All DoD employees may place signs or banners supporting candidates for partisan political office in their yards. They may also display a bumper sticker on their privately owned vehicles but not on a government vehicle.

Q. May PAS officials attend a political rally, meeting or fundraiser?

A. Yes. PAS officials may attend, **but not actively participate** in campaign events or fundraising functions sponsored by candidates for partisan political office or political parties. This means that at a political event, PAS officials are permitted to attend briefings, open forums, panel discussions, debates, receptions and dinners. **They may not however, actively participate in any policy planning or political strategy sessions for candidates for partisan political office or political parties. (May not draft position papers for the campaign)**

Q. May PAS officials give an official speech at an event (not a fundraiser) sponsored by a partisan political group or participate in a forum that is discussing DoD related topics as a part of the election cycle? (For example, A Symposium for Political Journalists Covering the 2020 Presidential Campaign – which includes a session on a DoD related topic)

A. Yes. PAS officials may give official speeches -- no advocacy and can only discuss DoD issues. At the forum, PAS officials may not answer questions concerning the operations of the campaign or comment on any campaign related issues.

Q. May PAS officials serve as surrogates for partisan candidates at political events?

A. No. PAS officials are prohibited from engaging in any political activity which is "in concert" with a political party, partisan political group or candidate for partisan political office. "In concert" activity is any activity that is sponsored or supported by a political party, partisan political group or candidate for partisan political office.

Q. May PAS officials serve as delegates to a political party convention?

A. No. DoD policy states that PAS officials may not attend a political party convention.

Q. May PAS officials write letters to the editor or post comments on a blog supporting a candidate for partisan political office?

A. Yes, but with some limitations. All DoD employees are permitted to express their personal opinions publicly on political subjects, however, when expressing one's personal opinion, DoD employees may not use their official titles or refer to their DoD positions.

Fundraising

Q. May PAS officials solicit, accept or receive contributions on behalf of a candidate running for public office in a partisan election?

A. No. Generally all DoD employees are prohibited from soliciting, accepting or receiving contributions in partisan elections.¹

Q. May PAS officials help organize a political fundraiser or speak at a fundraiser?

A. No. PAS officials are prohibited from participating in any "in concert" activity with a candidate for partisan political office or political party and are therefore, prohibited from organizing a political fundraiser or speaking at an event on behalf of a political party or candidate for partisan political office.

¹ There is an exception for members of labor and employee organizations (5 C.F.R. 734.208(b)(3) and elections in designated municipalities (5 C.F.R.733.103 & 733.105.)

Q. May PAS officials invite friends to political fundraising events by telling them about the fundraiser or by emailing them the invitation?

A. No. The Hatch Act prohibits all DoD employees from soliciting, accepting or receiving political contributions, which has been interpreted to include inviting individuals to political fundraisers. Therefore, the Hatch Act prohibits employees from inviting friends to a political fundraiser whether inviting them in person or by emailing them an invitation to the event.

Q. May the names of PAS officials appear on invitations to political fundraisers as sponsors, hosts or points of contact?

A. No. As noted in the answer to the preceding questions, all DoD employees are prohibited from soliciting, accepting or receiving political contributions. Having one's name on an invitation to a political fundraiser as a sponsor, host or point of contact is considered soliciting political contributions.

Q. May the spouses of PAS officials host fundraising events?

A. Yes. Hatch Act coverage is not transferred to spouses or family members. Therefore, as long as an employee's spouse is not covered by the Hatch Act (not a Federal employee), a spouse may host a fundraiser. The PAS official may attend the fundraiser, but is prohibited from assisting with any domestic/entertaining duties associated with the political event, even when the fundraiser is at his/her house. Attendance is allowed, but active participation is not.

Other

Q. May PAS officials encourage subordinates or contractors of DoD to participate in partisan political campaigns?

A. No. All DoD employees are prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election. This prohibition includes, using one's official authority to coerce any person to participate in partisan political activity. Such actions can result in criminal prosecution under 18 U.S.C. 610 and may constitute a prohibited personnel practice.

Q. May PAS officials encourage subordinates to vote?

A. Yes. The Federal Government has a longstanding policy of granting employees limited time off from work (i.e., excused absence) to vote in Federal, State, county, or municipal elections or in referendums on any civic matter in their community. Agencies have discretionary authority to grant excused absence to the extent that such time off does not seriously interfere with agency operations. Adhering to this policy, a supervisor may encourage her employees to vote in a manner that is consistent with DoD policy. The supervisor may not encourage or suggest that subordinates vote for a specific candidate or a political party's candidates.