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**(U) Understanding the Hatch Act**

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## Biography

Jeffrey Green was promoted to the position of senior attorney and Deputy Designated Agency Ethics Official at the Department of Defense in November 2000. Prior to that, Jeff was a deputy ethics official for the Department of Veterans Affairs Office of General Counsel, serving in that job for over 8 years. In 1997, he was selected for a 6 month detail to serve in the Office of the Counsel to the President. He has given numerous presentations on the Standards of Ethical Conduct for Employees of the Executive Branch. He has published several articles on ethics that have been approved for use by the Office of Government Ethics in lieu of an "in person" regulatory training requirement. He also has written a law review article on the History of the Federal Conflicts of Interest Law, and on the Emoluments Clause to the Constitution. He has served as a Guest Lecturer at the Georgetown University School of Law. Prior to Government work experience, Jeff worked in private practice where he developed ethics compliance programs for corporations and taught a business ethics course. Jeff graduated with a BA from Northwestern University and with both a JD and MBA from Washington University in St. Louis. He is a member of the bars of Texas, Pennsylvania and the District of Columbia.

## Understanding the Hatch Act

On February 5, 2020, Secretary Esper released a message titled "Ethical Conduct and Political Activities." This message may be found at <https://media.defense.gov/2020/Feb/06/2002245021/-1/-1/1/ETHICAL-CONDUCT-AND-POLITICAL-ACTIVITIES.PDF>. The article below summarizes the political activity rules that apply to most DoD civilian employees.

### How does Federal employment restrict political activity?

Enacted in 1939 and amended in 1993, the Hatch Act regulates the political activities of all civilian employees in the Executive Branch of the Federal government, with the exception of the president and vice president. Political activity is defined as activity directed toward the success or failure of a political party, a candidate for a partisan political office, or a partisan political group. Although most Federal employees are permitted to engage in political activity on their own time, some, such as administrative law judges, career senior executive service (SES) personnel, and military members are prohibited from engaging in political activity at any time. Employees who are permitted to engage in political activity outside the Federal workplace are known as "less restricted" for purposes of the Hatch Act. This article will focus on application of the Hatch Act to "less restricted" employees. Career SES, members of the military and political appointees in DoD should contact their ethics counsel for additional guidance.

### Which types of political activities are permitted under the Hatch Act?

"Less restricted" employees are free to campaign in partisan elections, distribute campaign materials, organize or manage political rallies or meetings, circulate nominating petitions, register voters, and make campaign speeches — provided that none of those activities is carried out in the Federal workplace or while the employee is on duty.

### May "less restricted" Federal employees solicit, accept or receive political contributions?

No, the Hatch Act prohibits all Federal employees from soliciting, accepting, or receiving political contributions from any person, except in certain instances involving labor or employee organizations.

### May a Federal employee be listed as the sponsor of a partisan fundraising event?

No, all Federal employees are prohibited from serving as a sponsor or point of contact, and a Federal employee may not sell tickets to a fundraising event. A "less restricted" employee, however, may be listed as a guest speaker or special guest on a fundraising invitation if the employee's official Government title does not appear on the invitation, and the invitation does not imply that he is soliciting contributions.

### May Federal employees wear partisan political buttons while on duty or in a Federal building?

No, the Hatch Act prohibits all Federal employees from engaging in any partisan political activity while on duty or in a

# From the desk of Jeffrey Green, Senior Attorney at the DoD's Office of General Counsel

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Federal building. Federal employees may not display partisan posters, bumper stickers, or other campaign materials in their Federal offices.

## **May Federal employees make financial contributions to political candidates?**

Yes, all Federal employees are permitted to make contributions to candidates, political parties, clubs, and organizations.

## **May a “less restricted” employee serve as the treasurer of a campaign?**

It depends. While a “less restricted” employee may serve as treasurer for a partisan political campaign or other partisan political group, he may not solicit, accept, or receive political contributions from any person (or engage in any other activities prohibited by the Hatch Act). Furthermore, an employee serving as the treasurer of a partisan political campaign may not allow his name to appear anywhere on a letter soliciting political contributions for the campaign, including in the letterhead of such a letter.

## **May “less restricted” employees work as part-time volunteers for partisan candidates?**

Yes, while off-duty, “less restricted” employees are permitted to work for a campaign by, for example, writing campaign speeches, canvassing votes for partisan candidates or political parties, addressing and stuffing envelopes, making phone calls on behalf of a candidate (as long as the calls are not for fundraising), and collecting signatures for a nominating petition.

## **May “less restricted” employees be members of political parties, attend political rallies, and join political clubs?**

Yes, a “less restricted” Federal employee may join a political party; serve as an officer of a political party or group; attend and participate fully in the nominating caucuses of political parties; organize or reorganize a political party or political group; participate in a political convention, rally, or other such gathering; and serve as a delegate, alternate, or proxy to a political party convention. A “less restricted” employee also may serve as an officer of a candidate’s campaign committee as long as it does not involve soliciting, accepting, or receiving political contributions.

## **May all Federal employees serve in the non-partisan role of election judge or poll watcher for the city or county on election day?**

Yes, all Federal employees may serve in positions such as election judges or poll watchers for a city or county. However, only “less restricted” employees may also act as recorders, watchers, or challengers, for a political campaign or political party and may drive voters to polling places on behalf of a political campaign in a privately-owned vehicle.

## **Are Federal employees permitted to be candidates in nonpartisan elections?**

Yes, all Federal employees may be candidates in nonpartisan elections when none of the candidates represents a partisan political party. Additionally, Federal employees may solicit, accept, and receive contributions in such elections for a nonpartisan office.

To find out more about the Hatch Act and how you are specifically covered, contact the Standards of Conduct office at [osd.soco@mail.mil](mailto:osd.soco@mail.mil).