

Hatch Act Compliance for Candidates Fact Sheet

Civilian employees of the federal government, the District of Columbia government or the U.S. Postal Service (each, an “Employee”) are subject to the Hatch Act (5 U.S.C. §§ 7321-7326) (the “Act”), which imposes certain restrictions on running for public office in Arlington and elsewhere. Set forth below is a summary of certain relevant provisions of the Act for informational purposes only. Candidates for public office seeking the nomination or endorsement of the Arlington Democrats are responsible for carefully reading and complying in full with the applicable provisions of the Act and its accompanying regulations.

This summary is not intended to be, and does not constitute, legal advice. If a candidate has specific questions about the Act’s application, they should be directed to agency ethics officials or the U.S. Office of Special Counsel (available at 202-804-7000 and <http://www.usa.gov/federal-agencies/office-of-special-counsel>). Please note that the website maintained by the Office of Special Counsel contains considerable helpful information about the Act for Employees considering public office.

What Are Hatch Act Restrictions?

Under the Act, an Employee may not, among other things, (i) “knowingly solicit, accept, or receive a political contribution from any person” (with certain very limited exceptions) or (ii) “run for the nomination or as a candidate for election to a partisan political office.” While an Employee may not run as a partisan candidate for public office, an Employee generally may run for local office in Arlington or the other Washington, D.C. suburbs as an independent (including in an election where other candidates represent political parties) and may solicit, accept and receive contributions as such an independent candidate. In addition, an Employee generally may run for political party office, such as an officer of the Arlington Democrats. Certain Employees, such as career SES Employees, Employees of certain intelligence or enforcement agencies and administrative law judges, however, are subject to further restrictions on political activity.

The Act and its accompanying regulations (5 C.F.R. Part 734) interpret the concept of “running” for nomination or as a candidate for a partisan political office broadly. The Act’s prohibition against an Employee so running “extends not merely to the formal announcement of candidacy but also to the preliminaries leading to such announcement and to canvassing or soliciting support or doing or permitting to be done any act in furtherance of candidacy.” See the U.S. Supreme Court’s opinion in C.S.C. v. Letter Carriers, 413 U.S. 548 (1973), in which the Court impliedly approved the quoted language. Examples of preliminary activities by an Employee directed toward candidacy that may violate the Act include: (i) taking the action necessary under the laws of a state, such as Virginia, to qualify for nomination or election; (ii) soliciting or receiving contributions or making expenditures in support of candidacy; (iii) canvassing for voter support; (iv) conducting polls for name recognition; (v) meeting with individuals to plan the logistics and strategy of a campaign; (vi) circulating nominating petitions; or (vii) giving consent to or acquiescing in such activities by others on the Employee’s behalf.

On the other hand, canvassing the local community to determine what issues are of importance to residents is allowed, provided the Employee does not present himself or herself as

a candidate for office. Employees are permitted to “be politically active in connection with a question which is not specifically identified with a political party [or candidate], such as a constitutional amendment, referendum, approval of a municipal ordinance, or any other question or issue of a similar character.” 5 C.F.R. § 734.203(b). In other words, any “testing the waters” activity that is purely issue-oriented would not run afoul of the Act.

What are the Potential Consequences for Violating the Hatch Act?

The U.S. Office of Special Counsel has exclusive authority to investigate allegations of political activity prohibited by the Act. It also has sole authority to prosecute alleged violations before the U.S. Merit Systems Protection Board, and render advisory opinions concerning the applicability of 5 C.F.R. Part 734 to political activities by Employees. In the event of a violation of the Act by an Employee, the Merit Systems Protection Board may order removal of the Employee, reduction in grade, debarment from federal or D.C. employment for a period of up to five years, suspension, reprimand and/or a civil penalty of up to \$1,000.

What is the Responsibility of an Employee Seeking a Nomination or Endorsement?

Prior to exploring candidacy for public office, an Employee is encouraged to consult his or her agency ethics counsel. Additionally, an Employee who seeks a nomination or endorsement from the Arlington Democrats with respect to any public office will be asked to provide a written ethics opinion from the Employee’s agency ethics counsel or the Office of Special Counsel confirming the Employee’s eligibility for such nomination or endorsement.