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## POLITICAL ACTIVITY *AND THE* STATE AND LOCAL EMPLOYEE

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### STATE AND LOCAL HATCH ACT 5 U.S.C. §§ 1501-08



- THE ACT WAS ORIGINALLY ENACTED IN 1939. INITIALLY IT ONLY APPLIED TO FEDERAL EMPLOYEES
- IN 1940, THE HATCH ACT WAS AMENDED TO EXTEND COVERAGE TO STATE AND LOCAL EMPLOYEES



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### STATE AND LOCAL HATCH ACT: COVERAGE 5 U.S.C. §§ 1501-08



- THE ACT APPLIES TO INDIVIDUALS WHO ARE —
  - EMPLOYED BY A STATE OR LOCAL AGENCY
  - IN THE EXECUTIVE BRANCH OF GOVERNMENT
  - WHOSE PRINCIPAL EMPLOYMENT IS
  - IN CONNECTION WITH AN ACTIVITY FINANCED
  - IN WHOLE OR IN PART
  - BY A FEDERAL LOAN OR GRANT

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STATE AND LOCAL HATCH ACT: COVERAGE  
5 U.S.C. §§ 1501



● EMPLOYED BY A STATE OR LOCAL AGENCY

- INCLUDES BOTH EMPLOYEES AND INDIVIDUALS HOLDING OFFICE
- INCLUDES STATE, COUNTY, AND MUNICIPAL AGENCIES OR DEPARTMENTS THEREOF
- INCLUDES A TERRITORY OR POSSESSION OF THE UNITED STATES

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STATE AND LOCAL HATCH ACT: COVERAGE  
5 U.S.C. §§ 1501



● IN THE EXECUTIVE BRANCH OF GOVERNMENT

- INDIVIDUALS EMPLOYED OR HOLDING OFFICE IN THE LEGISLATIVE BRANCH OR THE JUDICIAL BRANCH ARE NOT COVERED

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STATE AND LOCAL HATCH ACT:  
COVERAGE  
5 U.S.C. §§ 1501



● MUST BE THE INDIVIDUAL'S PRINCIPAL EMPLOYMENT

- ONLY AN ISSUE WHEN THE INDIVIDUAL HAS 2 OR MORE JOBS
  - KEY FACTORS TO CONSIDER:  
(1) AMOUNT OF HOURS WORKED  
(2) SALARY AMOUNT
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- WHERE IS THE INDIVIDUAL DURING NORMAL BUSINESS HOURS?

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STATE AND LOCAL HATCH ACT:  
COVERAGE  
5 U.S.C. §§ 1501



- PRINCIPAL EMPLOYMENT MUST BE **IN CONNECTION** WITH ACTIVITY FINANCED BY **FEDERAL LOAN** OR **GRANT**



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STATE AND LOCAL HATCH ACT:  
COVERAGE  
5 U.S.C. §§ 1501



- INDIVIDUAL IS COVERED BY THE ACT IF  
“AS A NORMAL AND FORSEEABLE INCIDENT TO PRINCIPAL POSITION OR JOB, THE INDIVIDUAL PERFORMS DUTIES **IN CONNECTION** WITH AN ACTIVITY FINANCED IN WHOLE OR IN PART BY A FEDERAL LOAN OR GRANT.”

*Special Counsel v. Williams*, 56 MSPR 277, 283 (1993).

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STATE AND LOCAL HATCH ACT:  
COVERAGE  
5 U.S.C. §§ 1501



PRACTICIONER'S TIP:

- LOOK AT THE PROGRAMS THAT AN INDIVIDUAL WORKS ON AND ASK WHETHER THERE ARE ANY FEDERAL LOANS OR GRANTS FINANCING THOSE PROGRAMS.
- CONSIDER **ALL DUTIES** OF THE INDIVIDUAL
- REMEMBER TO CONSIDER HOW OPERATING COSTS, EQUIPMENT COSTS, AND ADMINISTRATIVE COSTS ARE PAID

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**STATE AND LOCAL HATCH ACT:  
COVERAGE**  
5 U.S.C. §§ 1501



**EXAMPLES OF COVERED EMPLOYEES:**

- Executive Secretary of Housing Authority covered when agency receives an operating subsidy and secretary reviews & signs requests for subsidy. *Special Counsel v. Hayes*, 16 MSPR 166 (1983).
- Employee covered because part of his travel expenses – a mere \$350- came from a federal grant received through the state board of health. *In Re Lyle*, 2 PAR 413 (1951).

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**STATE AND LOCAL HATCH ACT:  
COVERAGE**  
5 U.S.C. §§ 1501



**EXAMPLES OF COVERED EMPLOYEES:**

- Employee who had general supervision of all engineering work for the State Department of Highway covered by the Act because engineering projects financed in part by federal grants. *In re Grant*, 2 PAR 156 (1944).

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**STATE AND LOCAL HATCH ACT:  
COVERAGE**  
5 U.S.C. §§ 1501



***SUPERVISORY EMPLOYEES & DIRECTORS***

**INDIVIDUAL WHO SUPERVISES EMPLOYEES WHO WORK ON FEDERALLY FUNDED PROGRAMS GENERALLY WILL BE HELD TO HAVE DUTIES IN CONNECTION WITH FEDERALLY FUNDED ACTIVITIES BECAUSE OF OVERSIGHT RESPONSIBILITIES**

*Palmer v. United States Civil Service Commission*, 297 F.2d 450 (7th Cir. 1962) (Director of Department of Conservation covered even though he claimed he spent less than one percent of his time on federally funded projects).

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STATE AND LOCAL HATCH ACT:  
COVERAGE  
5 U.S.C. §§ 1501



FEDERAL **LOAN OR GRANT** INCLUDES:

- GRANTS THAT PASS THROUGH THE STATE OR OTHER AGENCY
- FEDERAL REIMBURSEMENTS
- FEDERAL SUBSIDIES
- MEDICAID – (*Special Counsel v. Alexander*, 71 MSPR 636)

BUT **NOT**

- MEDICARE

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STATE AND LOCAL HATCH ACT:  
COVERAGE  
5 U.S.C. §§ 1501



**FACTS ABOUT COVERAGE:**

- IT IS NOT NECESSARY THAT AN INDIVIDUAL'S SALARY BE PAID WITH FEDERAL FUNDS
- THE INDIVIDUAL DOES NOT HAVE TO HAVE ADMINISTRATIVE OR EXECUTIVE DISCRETION OVER FEDERAL FUNDS OR DECIDE HOW THEY ARE SPENT
- PROGRAM DOES NOT HAVE TO BE FUNDED AT LEAST 50% BY FEDERAL FUNDS – ANY AMOUNT CAN TRIGGER COVERAGE

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STATE AND LOCAL HATCH ACT:  
COVERAGE  
5 U.S.C. §§ 1501



**FACTS ABOUT COVERAGE:**

- THE ACT CONTINUES TO APPLY TO INDIVIDUALS WHILE ON ANNUAL LEAVE, SICK LEAVE, LEAVE WITHOUT PAY, ADMINISTRATIVE LEAVE OR FURLOUGH
- PART-TIME, TEMPORARY OR SEASONAL EMPLOYEES ARE COVERED BY THE ACT

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STATE AND LOCAL HATCH ACT:  
EXEMPTIONS  
5 U.S.C. §§ 1501(4)(B)



**EDUCATIONAL EXEMPTION**

INDIVIDUAL IS NOT COVERED IF:

- EMPLOYED BY EDUCATIONAL OR RESEARCH INSTITUTION, ESTABLISHMENT, OR AGENCY THAT IS SUPPORT IN PART BY STATE OR LOCAL AGENCY
- FOR EXAMPLE: TEACHERS, PROFESSORS  
SCHOOL ADMINISTRATORS



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STATE AND LOCAL HATCH ACT:  
COVERAGE – PRIVATE, NONPROFIT  
5 U.S.C. §§ 1501



**PRIVATE NONPROFIT CORPORATIONS**

- **GENERAL RULE:** HATCH ACT DOES NOT APPLY TO EMPLOYEES OF PRIVATE, NONPROFIT CORPORATIONS.
- **EXCEPTION:** SOME FEDERAL STATUTES CONTAIN A PROVISION THAT RECIPIENT ORGANIZATIONS WILL BE TREATED AS “STATE OR LOCAL” AGENCIES FOR PURPOSES OF HATCH ACT.
  - HEAD START (42 U.S.C. 9851)
  - COMMUNITY SERVICE BLOCK GRANT (42 U.S.C. 9918)

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HATCH ACT DO'S  
5 U.S.C. § 1502



HATCH ACT COVERED EMPLOYEES MAY–

- ATTEND AND BE ACTIVE AT POLITICAL RALLIES AND MEETINGS
- JOIN AND BE ACTIVE MEMBER OF A POLITICAL PARTY OR CLUB, INCLUDING HOLDING OFFICE
- SIGN NOMINATING PETITIONS
- CAMPAIGN FOR OR AGAINST REFERENDUM QUESTIONS, CONSTITUTIONAL AMENDMENTS, MUNICIPAL ORDINANCES



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HATCH ACT DO's  
5 U.S.C. § 1502



HATCH ACT COVERED EMPLOYEES **MAY**—

- CAMPAIGN FOR OR AGAINST CANDIDATES IN PARTISAN ELECTIONS
- MAKE CAMPAIGN SPEECHES FOR CANDIDATES IN PARTISAN ELECTIONS
- DISTRIBUTE CAMPAIGN LITERATURE IN PARTISAN ELECTIONS
- BE CANDIDATE FOR PUBLIC OFFICE IN NONPARTISAN ELECTION

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HATCH ACT DON'Ts  
5 U.S.C. § 1502; 5 C.F.R. Part 151



COVERED EMPLOYEES MAY **NOT**—

- USE OFFICIAL AUTHORITY OR INFLUENCE TO INTERFERE WITH OR AFFECT AN ELECTION
- DIRECTLY OR INDIRECTLY COERCE, ATTEMPT TO COERCE, COMMAND, OR ADVISE A STATE OR LOCAL OFFICER OR EMPLOYEE TO PAY, LEND, OR CONTRIBUTE ANYTHING OF VALUE TO A PARTY, COMMITTEE, AGENCY OR PERSON FOR POLITICAL PURPOSES
- BE CANDIDATES FOR PUBLIC OFFICE IN PARTISAN ELECTIONS

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HATCH ACT DON'Ts  
5 U.S.C. § 1502(a)(1); 5 C.F.R. PART 151



COVERED EMPLOYEES MAY **NOT**—

USE OFFICIAL AUTHORITY OR INFLUENCE TO INTERFERE WITH AN ELECTION

- Use of official title
- Coercion of subordinates
- Solicit the uncompensated volunteer services of subordinates
- E-mail

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COVERED EMPLOYEES MAY **NOT**—

DIRECTLY OR INDIRECTLY COERCE, ATTEMPT TO COERCE, COMMAND, OR ADVISE A STATE OR LOCAL OFFICER OR EMPLOYEE TO PAY, LEND, OR CONTRIBUTE ANYTHING OF VALUE TO A PARTY, COMMITTEE, ORGANIZATION, AGENCY OR PERSON FOR POLITICAL PURPOSE.



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COVERED EMPLOYEES MAY **NOT**—

BE CANDIDATES FOR PUBLIC OFFICE IN PARTISAN ELECTIONS

- Election is partisan if ANY candidate is nominated or elected as representing a political party, for example, the Democratic or Republican Party.
  - Write-in candidacy (must be spontaneous)
  - Party office is permissible (Precinct Committee person)



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**CROSS FILING FOR OFFICE**

**ELECTION IS PARTISAN EVEN IF CANDIDATES ARE PERMITTED TO CROSS FILE FOR THE OFFICE.**

*SPECIAL COUNSEL V. YOHO, 15 MSPR 409 (1983)*



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**EXEMPTION FOR CERTAIN ELECTED OFFICIALS**

**THE PROHIBITION AGAINST BEING A CANDIDATE DOES NOT APPLY TO:**

1. The Governor or Lieutenant Governor of a State;
2. The mayor of a city;
3. A duly elected head of an executive department who is not classified under a merit or civil service system; or
4. An individual holding elective office.

**INDIVIDUAL MUST QUALIFY FOR EXEMPTION BASED ON THEIR PRINCIPAL EMPLOYMENT.**

**THESE INDIVIDUALS STILL SUBJECT TO OTHER PROHIBITIONS**

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**WHEN DOES IT BEGIN?**

- **WHEN AN INDIVIDUAL BEGINS TO COLLECT SIGNATURES FOR NOMINATING PETITIONS**
- **WHEN AN INDIVIDUAL BEGINS TO FUNDRAISE**
- **WHEN AN INDIVIDUAL MAKES AN ANNOUNCEMENT TO THE PRESS**
- **WHEN AN INDIVIDUAL FILES NOMINATING PETITIONS**
- **WHEN AN INDIVIDUAL PUTS A CAMPAIGN COMMITTEE TOGETHER**

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**NONPARTISAN CAN BECOME PARTISAN ELECTION WHEN:**

- **Standard:** There is evidence showing that partisan politics actually entered the campaign of a candidate.
  - Employee/candidate seeks and receives endorsement of political party.
  - Employee/candidate advertises endorsement of political party.
  - Employee/candidate uses political party resources.
  - Employee/candidate announces he is political party candidate.

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THE OFFICE OF SPECIAL COUNSEL'S  
ROLE & THE STATE AND LOCAL  
HATCH ACT  
5 U.S.C. § 1504



THE OFFICE OF SPECIAL COUNSEL SERVES TWO  
FUNCTIONS:

1. ISSUE ADVISORY OPINIONS CONCERNING THE HATCH ACT;
2. INVESTIGATE ALLEGATIONS OF POLITICAL ACTIVITIES PROHIBITED BY THE HATCH ACT AND SEEK DISCIPLINARY ACTION AGAINST THOSE WHO VIOLATE THE ACT.



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PENALTIES FOR VIOLATION  
(STATE AND LOCAL HATCH ACT)  
5 U.S.C. § 1505



MERIT SYSTEMS PROTECTION BOARD DETERMINES —

1. IF THERE HAS BEEN A VIOLATION OF THE HATCH ACT;  

AND
2. DOES THE VIOLATION WARRANT REMOVAL OF THE EMPLOYEE FROM THE COVERED POSITION.

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PENALTIES FOR VIOLATION  
(STATE AND LOCAL HATCH ACT)  
5 U.S.C. § 1506



WHEN VIOLATION WARRANTS REMOVAL OF THE EMPLOYEE,  
THE MERIT SYSTEMS PROTECTION BOARD

-NOTIFIES AGENCY TO REMOVE EMPLOYEE FROM POSITION

-IF AGENCY REFUSES TO REMOVE EMPLOYEE, AGENCY FORFEITS FEDERAL FUNDS IN AN AMOUNT EQUAL TO TWO YEARS OF THE PERSON'S SALARY



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## DEBARMENT

INDIVIDUAL ORDERED REMOVED CANNOT BE HIRED  
BY ANY OTHER STATE OR LOCAL AGENCY WITHIN  
THE SAME STATE FOR A PERIOD OF 18 MONTHS

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## HATCH ACT INFORMATION / ADVICE 5 U.S.C. § 1212 (f)



### EMPLOYEES MAY:

- OBTAIN ANSWERS TO SPECIFIC QUESTIONS ABOUT POLITICAL ACTIVITY BY CALLING OSC, AT —

800-85-HATCH OR 202-254-3650

- OBTAIN WRITTEN ADVISORY OPINIONS ABOUT THE HATCH ACT BY CONTACTING OSC —

BY MAIL, AT: U.S. OFFICE OF SPECIAL COUNSEL  
1730 M STREET, NW (SUITE 218)  
WASHINGTON, DC 20036-4505  
ATTN: HATCH ACT UNIT

BY FAX, AT: (202) 254-3700

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## OSC WEB SITE (<http://www.osc.gov>)



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