

## THE HATCH ACT

### The Hatch Act: Its Importance to State and Local Government Employees:

In 1939, Congress approved landmark legislation known as the Hatch Act which limits the political activities of federal employees, employees of the District of Columbia government, and certain employees of state and local governments. With the enactment of the Hatch Act, regulations governing the political activities of these employees were written into the United States Code for the first time.

In passing the Hatch Act, Congress determined that partisan political activity by federal employees, employees of the District of Columbia government, and certain employees of state and local governments must be limited for public institutions to function fairly and effectively. Through the years, various challenges to the Hatch Act have only reaffirmed this basic premise.

Who Is Covered? The Hatch Act restricts the political activity of an individual principally employed by a state or local executive agency in connection with a program financed in whole or in part by federal loans or grants. The following list offers examples of the types of programs which frequently receive financial assistance from the federal government: public health, public welfare, housing, urban renewal and area redevelopment, employment security, labor and industry training, public works, conservation, agricultural, civil defense, transportation, anti-poverty, and law enforcement programs. Usually, employment with a state or local agency constitutes the principal employment of the employee in question. When an employee holds two or more jobs, principal employment is generally deemed to be that job which accounts for the most work time and the more earned income.

As a final note, state and local employees subject to political activity laws continue to be covered while on annual leave, sickleave, leave without pay, administrative leave or furlough.

Hatch Act provisions do not apply to:

- 1) Individuals who exercise no functions in connection with federally financed activities; or
- 2) Individuals employed by educational or research institutions, establishments, or agencies which are supported in whole or in part by state or political subdivisions thereof, or by recognized religious, philanthropic or cultural organizations.

The law also exempts certain specified employees from the prohibition on candidacy for elective office. These exemptions include:

- 1) The governor or lieutenant governor of a state, or an individual authorized by law to act as governor;
- 2) The mayor of a city;
- 3) A duly elected head of an executive department of a state or municipality who is not classified under a state or municipal merit or civil service system; and
- 4) An individual holding public elective office. The latter exemption applies only when the elective office is the position which would otherwise subject the employee to the restrictions of the Hatch Act.

Political Do's and Don't's For State and Local Employees: An individual principally employed by a state or local executive agency in connection with a program financed in whole or in part by federal loans or grants.....

- ...May be a candidate for public office in a nonpartisan election
- ...May campaign for and hold elective office in political clubs and organizations
- ...May actively campaign for candidates for public office in partisan and nonpartisan elections
- ...May contribute money to political organizations or attend political fundraising functions

- ...May participate in any activity not specifically prohibited by law or regulation
- ...May not be a candidate for public office in a partisan election
- ...May not use official authority or influence for the purpose of interfering with or affecting the results of an election or nomination for office
- ...May not directly or indirectly coerce contributions from subordinates in support of a political party or candidate

An election is partisan if any candidate for an elective public office is running as a representative of a political party whose presidential candidate received electoral votes at the preceding presidential election.

**CAUTION:** An employee's conduct is also subject to the laws of the state and the regulations of the employing agency. Prohibitions of the Hatch Act are not affected by state or local laws.

The Office of the Special Counsel: The Office of the Special Counsel is responsible for investigating reports or complaints of Hatch Act violations by covered employees of state and local governments.

If an investigation indicates a violation of the law, a written complaint for disciplinary action may be filed with the U.S. Merit Systems Protection Board (MSPB). A copy of the complaint is served on the offending employee. Full opportunity is provided to contest the charges, including a right to a hearing before the MSPB. The employee may be represented by counsel at all stages of the proceedings.

After consideration of the entire record, MSPB will notify the employee and the employing agency of its decision. If the MSPB finds the offense warrants dismissal from employment, the employing agency must either: (1) dismiss the employee, or (2) forfeit a portion of the federal assistance equal to two years' salary of the employee. If the MSPB finds the violation does not warrant the employee's discharge, no penalty at all is imposed.

This is intended to be simply a summary of the laws, regulations and policies governing the political activities of certain employees of state and local governments. Its intent is to provide a basic overview of permissible and prohibited political activities. Employees should not rely on the opinions of friends or co-workers when they have questions with regard to a specific political activity. Ignorance of the law does not excuse an employee's violation of the Hatch Act. Reliance on incorrect or unofficial information also does not excuse a violation. Employees with additional questions may review a handbook on this subject which is available in each department and the Personnel Office. Or they may obtain an advisory opinion by telephoning the Office of the Special Counsel or by submitting their questions, in writing, to the following address: Office of the Special Counsel, U.S. Merit Systems Protection Board, 1120 Vermont Ave., N.W. Washington, D.C. 20419 (telephone 202-653-7188).