



TORII LEGAL ASSISTANCE

OFFICE OF THE STAFF JUDGE ADVOCATE



EMPLOYEE SUSPENDED FOR 120 DAYS! BY: Rudy Wartella

On August 2, 2010, a 120-day suspension was imposed on an Internal Revenue Service Revenue Agent for forwarding one emailⁱ. The IRS employee, violated the Hatch Actⁱⁱ on January 11, 2008, when he forwarded the ONE campaign e-mailⁱⁱⁱ to a number of individuals, including some co-workers.

The IRS employee forwarded an email from a presidential candidate soliciting online contributions. In the forwarded email, he added: "FYI...if you want to help out the campaign! PS...If you are tired of getting e-mails from me, just let a brotha know!" The IRS employee forwarded the e-mail while on duty, from his government office, and it contained his name, title, group, duty location, and telephone number.

The IRS employee admitted to violating the Hatch Act, but asserted that his offense only warranted a 30-day suspension, and not removal.

In Hatch Act cases, the MSPB looks to the seriousness of the violation and the following aggravating and mitigating factors:

- (1) the nature of the offense and the extent of the employee's participation;
- (2) the employee's motive and intent;
- (3) whether the employee had received advice of counsel regarding the activity at issue;
- (4) whether the employee ceased the activities;
- (5) the employee's past employment record; and
- (6) the political coloring of the employee's activities.

The Board did not remove the IRS employee, but they did impose a 120-day suspension. The opinion states:

The Board considers any Hatch Act violation by a federal employee, on duty and in government offices, to be a serious matter...the respondent's violation was serious because some of the e-mail recipients were federal employees, he used his employing agency's e-mail system, and he sent the e-mail while on duty from his agency office.

The lesson from this case is clear: Hatch Act violations are serious and violators may be fired. To learn more about the Hatch Act, please go the following website: <https://osc.gov/pages/hatchact.aspx>.

The Hatch Act applies to federal civilian employees. Similar prohibitions on political activities for Soldiers are contained in Army Regulation 600-20, paragraph 5-3 and Appendix B.

ⁱ <http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=520350&version=521812&application=ACROBAT>

ⁱⁱ <https://osc.gov/pages/hatchact.aspx>

ⁱⁱⁱ Significantly, he did not solicit subordinates or other individuals subject to his control or authority. Moreover, the petitioner did not charge, nor is there any evidence, that the respondent was a political operative or otherwise actively engaged in political fundraising or other campaign activity apart from the one e-mail that he forwarded.