



TORII LEGAL ASSISTANCE

OFFICE OF THE STAFF JUDGE ADVOCATE



FACEBOOK, TWITTER, AND THE FEDERAL EMPLOYEE BY: Rudy Wartella

Under the Hatch Act a federal employee can get fired for sending political emails from their government computers, but what about your home computer? What about your accounts with Facebook, Twitter, Myspace, LinkedIn, etc? The U.S. Office of Special Council has addressed many of these issues with Frequently Asked Questions and Answersⁱⁱ. A couple of interesting frequently asked questions as they apply to the individual federal employee are re-printed below.

Q. If a federal employee has listed his official title on his Facebook profile page, may he fill in the field provided for "political views" on his Facebook profile?

A. Yes. Although the Hatch Act and its attendant regulations prohibit federal employees from using their official titles while engaging in political activity, simply identifying the political party that they support on their Facebook profiles, without more, is not "political activity," that is, activity directed toward the success or failure of a political party, partisan candidate, or partisan political group.

Q. May federal employees who are "friends" with their subordinate employees advocate for or against a political party, partisan political group, or candidate for partisan public office on their Facebook pages?

A. (Mostⁱⁱⁱ, if not all, Army Employees on Okinawa).^{iv} Yes, but subject to the following guidelines. Although the Hatch Act prohibits using one's official authority or influence to affect the result of an election, OSC does not view this activity as violating the Hatch Act, provided the supervisor's statements are directed at all of his Facebook "friends," e.g., if he posted his opinion concerning a candidate in his Facebook "status" field. We see this activity as being akin to the supervisor placing a sign in his yard that promotes a candidate but that, incidentally, may be seen by his subordinates. On the other hand, such statements would violate the Hatch Act if the supervisor specifically directed them toward his subordinate employees, or to a subset of friends that includes subordinates, e.g., by sending a Facebook "message." In this situation, OSC would view the supervisor's actions as purposefully targeting subordinates with the message, as opposed to the scenario described above, in which the subordinates see the supervisor's opinions by chance. Similar to the guidance above concerning Facebook's messaging function, a supervisor may never send to subordinate employees an e-mail that is directed at the success or failure of a political party, partisan political group, or partisan candidate. OSC would view such an e-mail as one that purposefully targets subordinates, and thus it would be an improper use of the supervisor's official authority or influence to affect the result of an election.

Hatch Act violations are serious and violators may be fired. To learn more about the Hatch Act, please go the following website: <http://www.osc.gov/hatchact.htm> 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^v.

ⁱ <http://www.osc.gov/haFederalfaq.htm>

ⁱⁱ <http://www.osc.gov/haFederalFurtherRestricted.htm>

ⁱⁱⁱ To see if you are a "Restricted employee" click <http://www.osc.gov/haFederalFurtherRestricted.htm>. If you are a "Restricted Employee, the answer changes a little bit. See the complete answer at endnote ii above.

^{iv} Members of the uniformed services are not covered by the Hatch Act. However, if you are a reservist and a federal civilian employee, you are covered by the Hatch Act.