

NEWLY REVISED GUIDELINES FOR POLITICAL ACTIVITIES OF CITY EMPLOYEES

A number of federal, state, and local laws regulate the political activities of Baltimore City employees. Those laws include the federal Hatch Act, the Maryland Code, the Baltimore City Charter, the Baltimore City Code, the Rules of the Baltimore City Department of Human Resources, the Rules of Baltimore City Civil Service Commission and the Baltimore City Administrative Manual.

Restrictions under the federal Hatch Act apply *only* to City employees 1) who work for the executive branch of state or local government, 2) whose principal employment is in connection with an activity that is financed in whole or in part by federal loans or grants and 3) who perform duties related to that federally financed activity.¹

The following guidelines are necessarily general in nature. If you have specific questions about federal, state, or local law, these guidelines, or the application of legal requirements to specific facts, please contact the City Law Department. If you have information indicating that a City employee has violated state or local law, bring that information to the City Law Department, the Office of the Inspector General, or the State's Attorney. If you believe that an employee has violated the Hatch Act, notify the City Law Department. You also may file a complaint with the Hatch Act Unit of the United States Office of Special Counsel by following the instructions at: <https://osc.gov/Pages/HatchAct-HowToFile.aspx>.

If you have questions about political contributions or support of a political campaign, please refer them to the candidate's campaign headquarters. If you have any complaints about a political campaign, please refer them to the City or State Board of Elections.

State and Local Requirements: All City employees must comply with the following requirements under state and local law.

- City employees may not engage in political activity (including soliciting political contributions or participation in a candidate's campaign) while on the job during working hours.² Working hours are those claimed or reported by the employee for any time-keeping or leave purposes.
- City employees' requests for leave to campaign or participate in another person's campaign should be treated as any other request for leave.³
- City employees may not coerce any other state or local employee to contribute anything of value to any political cause.⁴

¹ See 5 U.S.C. § 1501; see also *Special Counsel v. Alexander*, 71 M.S.P.R. 636, 646-47 (1996) (grants include reimbursement by federal government to state or local governments).

² Md. Code, Local Gov., §1-304(1) (prohibiting political activity while on the job during working hours); Baltimore City Department of Human Resources Rule 40K ("Employees may not engage in political activity during work hours, may not use the City positions to interfere with a political nomination or election, and may not coerce any other state or local employee to contribute anything of value to any political cause."); see also Rules of the Baltimore City Civil Service Commission, Rule 56(2)(p).

³ Administrative Manual 200-8.

- At no time may City employees knowingly request or solicit the payment of any political contribution, assessment, or subscription from any person in the Civil Service.⁵
- City employees may not advocate the overthrow of the government by unconstitutional or violent means.⁶
- A City employee may not intentionally use the prestige of his or her office or position for his or her own private gain or that of another.⁷ “Misuse of the prestige” of office or position has been defined broadly; “private gain” would include the success of a candidate’s campaign.⁸
- City employees may not use their City positions to interfere with a political nomination or election.⁹
- City employees may not use the City’s electronic communications systems for any “non-government business uses,” including “sending political messages.”¹⁰
- Except as otherwise provided by law, City employees may not be required to provide any political service.¹¹
- Except as otherwise provided by law, City employees may freely participate in any political activity and express any political opinion.¹²

⁴ Baltimore City Department of Human Resources Rule 40K; Rules of the Baltimore City Civil Service Commission, Rule 56(2)(p).

⁵ See Baltimore City Charter, Art. VII, § 102 (“No person in the Civil Service shall for any reason be under any obligation to contribute to any political fund, and no person shall knowingly, directly or indirectly, in person or by letter, request or solicit the payment of any political assessment, subscription or contribution from any person in the Civil Service.”).

⁶ Md. Code, Local Gov., §1-304(2); Rules of the Baltimore City Civil Service Commission, Rule 56(2)(p).

⁷ Baltimore City Code, Art. 8, §6-36.

⁸ Cf., State Ethics Comm’n, Advisory Op. No. 00-02, 19A COMAR 00.02 (Apr. 12, 2000) (interpreting the term “prestige in office” to mean that employees must “avoid circumstances” where their “position[s] may figure in private campaigning” or where information available by virtue of their government employment (*i.e.* mailing lists or connections to vendors) is used in a campaign); State Ethics Comm’n, Advisory Op. No. 98-04, 19A COMAR 98.04 (Aug. 4, 1998) (explaining that employees must “maintain a clear separation between working at a State job and handling matters for a campaign”).

⁹ Baltimore City Department of Human Resources Rule 40K; Rules of the Baltimore City Civil Service Commission, Rule 56(2)(p).

¹⁰ Baltimore City Administrative Manual, AM-118-1.

¹¹ Md. Code, Local Gov., §1-303(2).

¹² Md. Code, Local Gov., §1-303(1).

Federal Requirements: A City employee must follow *all* the requirements above, *plus* those of the Hatch Act, *if* the Hatch Act applies to that employee.

The employee is subject to the Hatch Act if:

1. He or she works for the executive branch of state or local government.¹³
2. His or her “principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency”¹⁴ and
3. He or she performs duties in connection with those financed activities.

An employee covered by the Hatch Act:

- may not use his or her “official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office.”¹⁵
- may not “directly or indirectly coerce, attempt to coerce, command, or advise a covered state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.”¹⁶ Under this standard, a covered City employee may not request a contribution for partisan political purposes from another covered employee.¹⁷
- *may be subject to an additional rule IF* the Hatch Act covered employee’s salary is, “paid **completely**, directly or indirectly, by loans or grants made by the United States or a Federal agency.” (emphasis added). If the employee’s salary is so paid, then that employee may not be a candidate for public office in a partisan election unless that

¹³ 5 U.S.C. §1501(2) (state or local agency “means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof”); *Special Counsel v. Bissell*, 61 M.S.P.R. 637, 641 (1994) (courts look to the laws of the state or local government to determine what agencies are part of the executive branch).

¹⁴ 5. U.S.C. §1501(4); *see also Special Counsel v. Alexander*, 71 M.S.P.R. 636, 646-47 (1996) (grants include reimbursement by federal government to state or local governments).

¹⁵ 5 U.S.C. §1502(a); *McKechnie v. McDermott*, 595 F. Supp. 672, 675 (1984) (held to violate the Hatch Act’s prohibition on using official influence to affect the result of an election when the Director of a local government’s transportation department put the name of the candidate he supported (the current mayor) on buses and gave out free bus service coupons during the campaign, as well as campaigning while on the job).

¹⁶ *Id.*; *United Public Workers of America v. Mitchell*, 330 U.S. 75, 100 (1947) (“It is only partisan political activity that is interdicted. It is active participation in political management and political campaigns. Expressions, public or private, on public affairs, personalities and matters of public interest, not an objective of party action, are unrestricted by law so long as the Government employee does not direct his activities toward party success.”)

¹⁷ *See Bauers v. Cornett*, 865 F.2d 1517, 1526 (8th Cir. 1989) (holding that a state employee violated §1502(a)(2) of the Hatch Act when she posted flyers at work requesting that fellow employees contribute to partisan lobbying efforts because “[s]olicitations for partisan purposes violate the Hatch Act” and are not protected speech under the First Amendment).

person is currently holding an elective office.¹⁸ However, an employee covered by the Hatch Act may be a candidate for public office in a nonpartisan election.¹⁹

Penalties: A violation of these federal, state, and local requirements could result in:

- Conviction of a misdemeanor;²⁰
- A fine of up to \$3,000;²¹
- Imprisonment for 6 months;²² and
- Discharge, demotion, or suspension from City employment.²³

Additional Guidelines: The following additional guidelines should direct the political activities of City employees during the campaign season.

- Refer any inquiry concerning political contributions or support of a political campaign to the candidate's campaign headquarters.
- Refer any complaints about a campaign to the City or State Board of Elections.
- Do not place or affix any political campaign materials on City property (including buildings and city vehicles).²⁴
- Do not wear any political campaign materials while on duty or while working in an official, City capacity.²⁵
- Do not use City publications, equipment, facilities, postage, letterhead, official stationery, funding, or e-mail to support or oppose any political candidate or political party.²⁶
- If you have any information indicating that an employee has violated these guidelines, advise the employee and/or the employee's supervisor or your supervisor.

¹⁸ 5 U.S.C. §§1502, 1503.

¹⁹ 5 U.S.C. §1503; *Special Counsel v. Mahnke*, 54 M.S.P.R. 13, 15-17 (1992) (a partisan election exists where any candidate in that contest represents a party whose nominee received any electoral votes in the last presidential election); *Brandon v. Southwest Mississippi Sr. Services, Inc.*, 834 F.2d 536, 537 (5th Cir. 1987) (election can be partisan even if employee runs as an independent. It is the election's status as partisan that matters, not the employee's party affiliation).

²⁰ Md. Code, Local Gov., §1-305.

²¹ *Id.*

²² *Id.*

²³ See 5 U.S.C. §1506 (if employee found violating Hatch Act is not removed from office when ordered, the federal funds given to the government may be reduced); Rules of the Baltimore City Civil Service Commission, Rule 56(3).

²⁴ Rules of the Baltimore City Civil Service Commission, Rule 56(2)(p); see also City Code, Art. 19, § 45-2 (prohibition on placing any signs on property owned or leased by City).

²⁵ Rules of the Baltimore City Civil Service Commission, Rule 56(2)(p); see also State Ethics Comm'n, Advisory Op. No. 98-04, 19A COMAR 98.04 (Aug. 4, 1998) (explaining that employees must "maintain a clear separation between working at a State job and handling matters for a campaign").

²⁶ *Id.*; see also Baltimore City Administrative Manual, AM-118-1 (regarding electronic communications); Baltimore City Code, Art. 8, §6-36 (regarding use of prestige in office).

Frequently Asked Questions:

- Q.** May I solicit money for political campaigns from other City employees if they are not below me in the chain of supervision?
- A.** Yes, but only under certain circumstances. You may not solicit the contributions in City offices, on City time, or using the City’s electronic communications systems. You may not solicit contributions from anyone who is a member of the Civil Service. If you are covered by the Hatch Act, you may not solicit funds from another employee who also is covered by the Hatch Act. Finally, you may not solicit contributions from employees whom you directly or indirectly supervise, even if they are not in your official chain of command.
- Q.** Are the rules and guidelines the same regardless of which campaign or candidate I want to support?
- A.** Yes.
- Q.** May I make available a list of City employees to a campaign?
- A.** Only if the information would be available to the campaign under Maryland’s Public Information Act (PIA). The PIA law with respect to lists of email addresses and contact information has recently changed and you should contact the Law Department if you get a request for this information. You may not disclose employees’ personnel records or their home addresses or telephone numbers.
- Q.** While I may not send political messages via the City’s electronic communications systems, may I answer those types of messages from my City Blackberry or computer?
- A.** No, except to provide alternative non-City contact information.
- Q.** If a non-political communication during working hours or while on the job turns political, do I have to promptly terminate it or say we must continue it later?
- A.** Yes. While there is no need to be impolite, you should end the political discussion as expeditiously as possible. You may give your personal or campaign contact information to the person with whom you are communicating and suggest that you continue the political conversation during your non-work hours. Remember that under state law, you may not engage in political activity while on the job during working hours.
- Q.** While City employees may not be “required” to provide any political service or support a campaign or candidacy, can they be “strongly encouraged” to do so?
- A.** You may ask other employees to help with a political campaign, but only if: (1) the request is not made on the job during working hours or via City owned communications equipment; and (2) you do not directly or indirectly supervise the person. In addition, you may not ask for the employee’s assistance if both you and

the employee are covered by the Hatch Act. Also, it must be clear to the employees being asked that it is their voluntary choice to say “yes” or “no.”

- Q.** May I tell my fellow employees which candidate I support, even if I do that in my City workplace during business hours?
- A.** Yes (because of your right to express a political opinion), but do not cross the line while on the job between personal free speech and appearing to be acting as a “campaign operative.” Remember that you may not engage in political activity – including soliciting funds or recruiting campaign workers – while on the job during working hours. Rule of thumb: best to wait to be asked the question of whom you support instead of offering that information. You are also free to keep your political views and support private.
- Q.** If I have a candidate’s bumper sticker on my personal car, must I remove it because I park in a City designated space or a garage used by City employees?
- A.** No. You may display the candidate’s bumper sticker on your own vehicle. But you may not affix or display the bumper sticker or other campaign materials on a City vehicle.
- Q.** If a private party has business pending before the City and I am in a position to influence its outcome, may I ask that person (during off hours) to make a contribution to a particular candidate or to otherwise help out on a campaign?
- A.** Yes, but you need to take all steps possible to separate the pending business and the request for help or a contribution. Do not discuss them in the same conversation and try to defer discussion about the help or contribution until after you have made your decisions regarding the pending business. Even if coercion or *quid pro quo* is the furthest thing from your mind, conversations that mix the two subjects can be misunderstood and lead to claims that you may have violated the law.
- Q.** Is the answer different if the person with whom I talk (off hours) has business with the City, but I neither have (nor intend to have) any influence on its outcome?
- A.** It depends on the circumstances and the particulars. If you solicit a contribution and the contributor asks you to influence the outcome of city business, nodding your head ambiguously or saying “ok” when you plan to do nothing would violate the Baltimore City Ethics laws. Instead, inform the contributor that you have no influence over a particular process or outcome. You also must comply with applicable campaign finance laws when soliciting funds for a campaign. If you have questions about fundraising for a particular campaign, please contact the campaign’s headquarters.
- Q.** May I take leave (sick, personal, vacation, or compensatory) in order to participate in political activities?

- A. Subject to the approval of your supervisor(s) as with any other leave request, you may use your personal, vacation, or compensatory leave to participate in political activities. However, you may not take sick leave to participate in political activities.
- Q. May I receive a political call on my City-issued cell phone?
- A. You should avoid receiving political calls on your City-issued cell phone. According to the Administrative Manual (AM-509-2), all personal calls, both incoming and outgoing, on City-issued cell phones are to be avoided unless it is an emergency situation with subsequent approval of the agency head. Employees must reimburse the City for the cost of all personal calls in accordance with procedures established by the Municipal Telephone Exchange.
- Q. May I put a political activity on my work calendar?
- A. You may put your personal activities, such as political activities, on your paper work calendar, even if it is a City-issued calendar. Placing personal items on your electronic work calendar could be seen as a violation of AM-118-1. Please note that you should not rely on any expectation of privacy regarding information that you have recorded on a City-issued calendar.
- Q. If I am in a meeting while on the job during working hours and the person with whom I am meeting offers to help with a political campaign, what is the appropriate response?
- A. You should: (1) refer the person to the campaign's headquarters; and/or (2) provide the person with your personal or campaign contact information and suggest that you continue the conversation during your non-work hours.
- Q. If a member of the Mayor's staff or other City employee is asked to attend a political fundraiser, in what capacity would that employee be attending the fundraiser? Could the employee discuss City-related issues at the fundraiser?
- A. The employee may attend the fundraiser only on his or her own time and at his or her own expense. The employee may discuss City-related issues at the event. However, the employee may not represent that he or she is participating in the event in his or her official capacity, including wearing any City uniform or clothing designating the person as a City employee. The employee may not use the prestige of their City employment to assist in the campaign.
- Q. I have specific questions about how local, state, or federal law applies to my situation.
- A. Please contact the City Law Department:
The Solicitor at andre.davis@baltimorecity.gov
Hilary Ruley at hilary.ruley@baltimorecity.gov