




**Homeland
Security**

November 21, 2007

MEMORANDUM FOR ALL NON-CAREER DHS EMPLOYEES

FROM: Secretary Chertoff 

SUBJECT: Restrictions on Political Activities of Non-Career Employees

As employees of the Department of Homeland Security (DHS), we have been entrusted by the people of the United States with a broad mission that goes to the heart of ensuring the safety and well-being of our country. For the public to retain its confidence that we are adhering to our responsibilities, we must ensure that politics – both in fact and in appearance – do not compromise the integrity of our work. This means that Department employees, particularly non-career employees, have an obligation to perform their duties in a politically neutral and impartial manner.

The first Secretary of the Department established a policy restricting the political activities of non-career employees with a policy memorandum on June 27, 2003. The first Chief of Staff supplemented this policy by memorandum on October 26, 2004, just before the 2004 Presidential election by prohibiting participation in the 2004 election activities. This memorandum builds upon that previous guidance and is intended to reiterate basic restrictions on political activity generally applicable to all employees, and clarify DHS policy further limiting the political activities of non-career employees.

As used in this memorandum, the term “non-career employees” includes those employees appointed by the President and confirmed by the Senate, non-career members of the Senior Executive Service, and employees who are appointed to positions classified in Schedule C of the Excepted Service. The restrictions on non-career employees apply even while off-duty, including while on leave.

General Restrictions Applicable to All Federal Employees

Statutes and regulations establish express limitations on the political activity of all Federal employees. Political activity is defined as “an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.”

See 5 C.F.R. §734.101. Under the Hatch Act (5 U.S.C. §§7321-7326) and associated regulations (5 CFR Part 734, Subparts B and C), Federal employees may not:

- use their official authority or influence to interfere with or affect the result of an election;

- solicit, accept, or receive a political contribution;¹
- solicit, accept, or receive uncompensated volunteer services from an individual who is a subordinate;
- allow their official titles to be used in connection with fund-raising activities;
- run for nomination or election to public office in a partisan election;
- solicit or discourage the political activity of any person who is a participant in any matter before DHS; or
- participate in political activities while on duty, in uniform, in any room or building occupied in the discharge of official duties or while using a government vehicle.

5 C.F.R. §§734.302-734.306. For more information, please see www.osc.gov/hatchact.htm.

The prohibition on participating in political activities while on duty extends to the use of government e-mail and the internet when it is directed toward the success or failure of a party or candidate. This means that employees may not use any government equipment to engage in partisan political activities, and specifically may not send or forward political material or messages using government e-mail accounts or while in a government building.²

DHS Policy Restrictions Applicable to Non-career employees

As a matter of DHS policy, non-career employees are subject to additional restrictions on political activities as set forth below. The restrictions are intentionally more stringent than those imposed on career government employees and non-career employees at other agencies who are not directly involved in the homeland security mission. See 5 C.F.R. §734.104 (permitting agencies to establish additional restrictions on political activities for non-career employees).

Active Participation in Political Activities Prohibited

Non-career employees at DHS are restricted in their participation in political activities in a manner consistent with 5 CFR Part 734, Subpart D, which prohibits employees from actively participating in political management or partisan political campaigns as that phrase is defined in 5 U.S.C. 7323(b)(4). This means as a matter of DHS policy, non-career employees may not:

- appear on the program, on the dais, or in the receiving line of a political event;

¹ For exceptions in connection with Designated Localities and Federal labor organizations refer to 5 C.F.R. 734.208(b)(2) and (b)(4).

² In one particular case, a Federal employee disseminated a partisan political e-mail to 27 of her work colleagues while she was on duty and in her Federal workplace. The e-mail invited the recipients to a party the employee was co-hosting that would feature a candidate for partisan political office as a special guest. The e-mail and its attachment informed recipients of the partisan political office for which the individual was a candidate, described the candidate in favorable terms, and contained a link to the candidate's campaign website. After investigating the matter, OSC determined that the employee violated the Hatch Act. OSC, the employee, and the Federal agency agreed to informally settle this matter by suspending the employee without pay for 40 consecutive work days.

- allow one's name to be used in connection with the promotion of a political event;
- engage in political activity (to include wearing political buttons) while on duty, while in a government occupied office or building, while wearing an official uniform or insignia, or while using a government vehicle;³
- manage a political campaign;
- distribute fliers printed by a candidate's campaign committee, a political party, or partisan political group;
- serve as an officer of a political party, a member of a national, state, or local committee of a political party, an officer or member of a committee of a partisan political group, or be a candidate for any of these positions;
- organize or reorganize a political party organization or partisan political group;
- serve as a delegate, alternate, or proxy to a political party convention;
- address a convention, caucus, rally, or similar gathering of a political party or partisan political group in support of or in opposition to a candidate for partisan political office or political party office, if such address is made in concert with such a candidate, political party, or partisan political group;
- organize, sell tickets to, promote, or actively participate in fund-raising activity of a candidate for partisan political office or of a political party or partisan political group;
- canvass for votes in support of or in opposition to a candidate for partisan political office or a candidate for political party office, if such canvassing is done in concert with such a candidate, political party, or partisan political group;
- endorse or oppose a candidate for partisan political office or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material if such endorsement or opposition is done in concert with such a candidate, political party, or partisan political group;
- initiate or circulate a partisan nominating petition;
- act as recorder, watcher, challenger, or similar officer at polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office; or
- drive voters to polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office.

³ An employee may put a bumper sticker on a personal vehicle and park it in a government-owned or subsidized parking lot, but may not use the vehicle in the course of official business. In addition, employees may display signs on their property and in their residences, and in similar personal circumstances that are not connected with their official positions.

Passive Participation in Political Activities Prohibited Without Approval of the Deputy Chief of Staff

Passive participation in political activities by non-career employees, which is characterized as mere attendance at political fundraisers or campaign events without any active participation in the promotion, production, or presentation of the activity, is also prohibited unless the Deputy Chief of Staff expressly approves the participation in advance.

In addition, the acceptance of a gift of free or discounted attendance at such an event may only be approved if it also meets one of the exceptions to the gift rules, including gifts based on a personal relationship or outside business relationship unrelated to official status. Non-career employees who seek approval to attend a political event or accept a gift in connection with a political event, must contact the Deputy Chief of Staff (for event approval) and the Designated Agency Ethics Official (for gift approval) sufficiently in advance of the event to allow for review of the request and prior approval.

Special Consideration Required for Official Events

Non-career employees must be especially vigilant in avoiding the appearance of partisanship in the course of attending official events. Official events are those proceedings that a non-career employee attends in furtherance of an official duty or in an official capacity. Non-career employees must carefully assess official events to ensure that participation could not be construed as advancing a political agenda or candidate. For example, a speech or grant announcement made in a State shortly before a general election, primary, or caucus, while categorized as an “official event,” may not be appropriate for a non-career employee to attend – particularly where it involves an appearance with a candidate for partisan political office.

In determining whether appearance at an official event could be construed as inappropriately partisan, non-career employees should consider, among other factors, the identity of the sponsor of the event, the group being addressed, the other participants at the event, the timing of the event, and the subject of any speech to be given. If a non-career employee has any concern about whether an event may raise an appearance of impropriety, he or she should seek approval from the Deputy Chief of Staff before agreeing to appear. If asked by a current or former member of the Administration to participate in an official capacity in an event that a non-career employee believes could be construed as inappropriately partisan, non-career employees should contact the Deputy Chief of Staff for direction regarding how to proceed.

Activities Not Affected

This memorandum does not affect non-career employees’ right to register and vote in any election, or serve as an election judge or clerk to perform nonpartisan duties as prescribed by state or local law. Further, this memorandum does not impact non-career employees’ ability to:

- participate in nonpartisan activities of a civic, community, social, labor, or professional organization;

- take an active part (as a candidate or in support of a candidate) in a non-partisan election (such as a school board election);
- be a member of a political party or other partisan political group; or
- make a financial contribution to a political party, partisan political group, or to the campaign committee of a candidate for a partisan political office (so long as the fact of the donation is not used in a promotional manner).