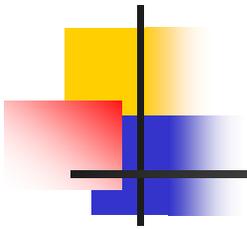


***PROHIBITED PERSONNEL PRACTICES
WHISTLEBLOWER PROTECTION
USERRA***

***RIGHTS AND REMEDIES
OF FEDERAL EMPLOYEES
UNDER 5 U.S.C., CHAPTERS 12 & 23***

**Patrick H. Boulay
Attorney
Investigation & Prosecution Division III
U.S. OFFICE OF SPECIAL COUNSEL**



TOPICS

5 U.S.C. CHPTRS. 12, 23, 73

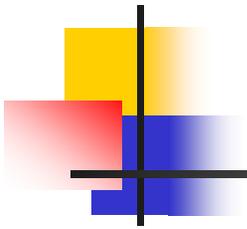
U.S. OFFICE OF SPECIAL COUNSEL (OSC)



PROHIBITED PERSONNEL PRACTICES



WHISTLEBLOWER PROTECTION

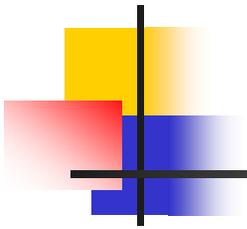


OFFICE OF SPECIAL COUNSEL (OSC)

5 U.S.C. §§ 1211-19; 5 C.F.R. PART 1800

AUTHORIZED TO —

- INVESTIGATE PROHIBITED PERSONNEL PRACTICES AND OTHER ACTIVITIES PROHIBITED BY CIVIL SERVICE LAW, RULE, OR REGULATION
- SEEK CORRECTIVE ACTION ON BEHALF OF INDIVIDUALS WHO ARE THE VICTIMS OF PROHIBITED PERSONNEL PRACTICES
- SEEK DISCIPLINARY ACTION AGAINST AGENCY OFFICIALS WHO COMMIT PROHIBITED PERSONNEL PRACTICES

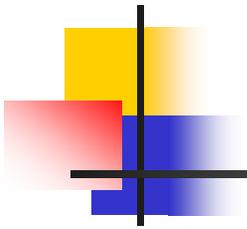


OFFICE OF SPECIAL COUNSEL (OSC)

5 U.S.C. §§ 1211-19; 5 C.F.R. PART 1800

AUTHORIZED TO —

- PROVIDE A SAFE CHANNEL FOR WHISTLEBLOWER DISCLOSURES BY FEDERAL EMPLOYEES, FORMER EMPLOYEES, AND APPLICANTS FOR EMPLOYMENT
- ADVISE ON AND ENFORCE HATCH ACT PROVISIONS ON POLITICAL ACTIVITY APPLICABLE TO FEDERAL, STATE, AND LOCAL GOVERNMENT EMPLOYEES
- OTHER AREAS ENFORCED: USERRA, ARBITRARY AND CAPRICIOUS WITHHOLDING UNDER FREEDOM OF INFORMATION ACT

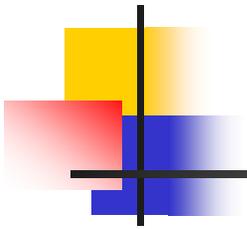


RESPONSIBILITIES OF AGENCY OFFICIALS

5 U.S.C. § 2302(c)

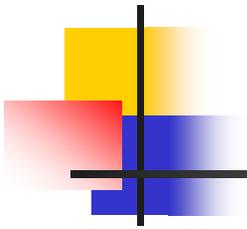
AGENCY HEADS, AND OFFICIALS WITH DELEGATED PERSONNEL MANAGEMENT AUTHORITY, ARE RESPONSIBLE FOR —

- PREVENTING PROHIBITED PERSONNEL PRACTICES
- COMPLYING WITH AND ENFORCING CIVIL SERVICE LAWS, RULES, AND REGULATIONS
- ENSURING THAT EMPLOYEES ARE INFORMED OF THEIR RIGHTS AND REMEDIES (IN CONSULTATION WITH OSC)



KEY CONCEPTS

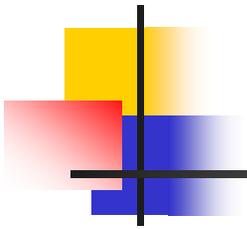
- *MERIT SYSTEMS PRINCIPLES*
THE FRAMEWORK AND FOUNDATION FOR MAKING ALL PERSONNEL DECISIONS IN THE CIVIL SERVICE
- *PROHIBITED PERSONNEL PRACTICES*
ADMONITIONS AGAINST SPECIFIC PRACTICES THAT CONFLICT WITH MERIT SYSTEMS PRINCIPLES
- *USERRA*
REEMPLOYMENT WITH BENEFITS OF ACTIVATED MILITARY RESERVISTS



MERIT SYSTEM PRINCIPLES

5 U.S.C. § 2301(b)

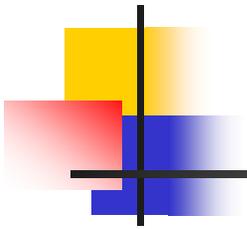
1. RECRUIT, SELECT, AND ADVANCE ON THE BASIS OF MERIT AFTER FAIR AND OPEN COMPETITION
2. TREAT EMPLOYEES AND APPLICANTS FAIRLY AND EQUITABLY
3. PROVIDE EQUAL PAY FOR EQUAL WORK; REWARD EXCELLENT PERFORMANCE
4. MAINTAIN HIGH STANDARDS OF INTEGRITY, CONDUCT, AND CONCERN FOR THE PUBLIC INTEREST



MERIT SYSTEM PRINCIPLES

5 U.S.C. § 2301(b)

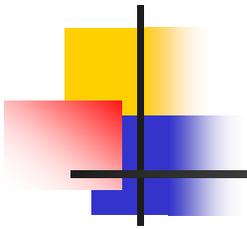
- 5. USE HUMAN RESOURCES EFFECTIVELY AND EFFICIENTLY**
- 6. RETAIN OR SEPARATE EMPLOYEES ON THE BASIS OF THEIR PERFORMANCE**
- 7. PROVIDE EMPLOYEES WITH EFFECTIVE TRAINING AND EDUCATION**
- 8. PROTECT EMPLOYEES FROM IMPROPER POLITICAL INFLUENCE**
- 9. PROTECT EMPLOYEES FROM REPRISAL FOR LAWFUL DISCLOSURES**



PROHIBITED PERSONNEL PRACTICES: OVERVIEW

12 PROHIBITED PERSONNEL PRACTICES — FALL UNDER ONE OF FOUR GENERAL CATEGORIES:

- **DISCRIMINATION**
- **HIRING PRACTICES THAT OFFEND MERIT SYSTEM**
- **RETALIATION FOR ENGAGING IN PROTECTED ACTIVITY (INCLUDING WHISTLEBLOWING)**
- **THE CATCH-ALL: VIOLATION OF LAWS, RULES OR REGULATIONS THAT IMPLEMENT MERIT SYSTEMS PRINCIPLES (INCLUDING VIOLATIONS OF CONSTITUTIONAL RIGHTS)**

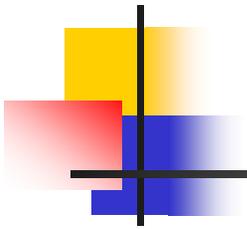


DISCRIMINATION

PROHIBITED PERSONNEL PRACTICE TO DISCRIMINATE AGAINST AN EMPLOYEE:

- BASED ON RACE, COLOR, NATIONALITY, RELIGION, GENDER, HANDICAPPING CONDITION, AGE, MARITAL STATUS, OR POLITICAL AFFILIATION
- BASED ON “CONDUCT WHICH DOES NOT ADVERSELY AFFECT THE PERFORMANCE OF THE EMPLOYEE OR APPLICANT, OR THE PERFORMANCE OF OTHERS”

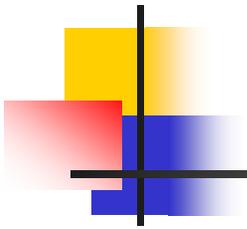
5 U.S.C. § 2302(b)(1) and (b)(10)



HIRING OFFENSES

OBSTRUCTING THE RIGHT TO COMPETE, INFLUENCING
WITHDRAWAL FROM COMPETITION, UNAUTHORIZED
PREFERENCES, NEPOTISM, CONSIDERING IMPROPER JOB
REFERENCES, VIOLATING VETERANS' PREFERENCE

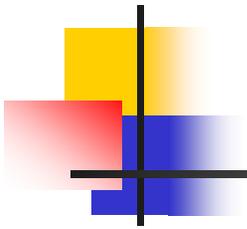
*5 U.S.C. § 2302(b)(2); (b)(4); (b)(5); (b)(6);
(b)(7); (b)(11)*



HIRING OFFENSES

MOST COMMON VIOLATIONS:

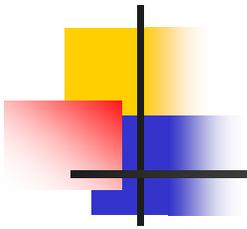
- DECEIVING OR WILFULLY OBSTRUCTING RIGHT TO COMPETE FOR EMPLOYMENT — *5 U.S.C. § 2302(b)(4)*
- INFLUENCING WITHDRAWAL FROM COMPETITION IN ORDER TO IMPROVE OR INJURE EMPLOYMENT PROSPECTS OF ANOTHER — *5 U.S.C. § 2302(b)(5)*
- GIVING AN UNAUTHORIZED PREFERENCE OR ADVANTAGE TO IMPROVE OR INJURE THE PROSPECTS OF ANY PARTICULAR PERSON FOR EMPLOYMENT — *5 U.S.C. § 2302(b)(6)*



HIRING OFFENSES

COMMON MISCONCEPTION:

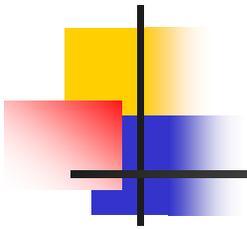
- IT IS NOT A PROHIBITED PERSONNEL PRACTICE TO ACT UPON ONE'S EXISTING EXPECTATION THAT ONE PERSON MAY BE THE BEST SELECTEE FOR A PARTICULAR POSITION (*"PRESELECTION"*).
- TO VIOLATE THE LAW THERE MUST BE —
 - ✓ THE GRANT OF SOME ILLEGAL ADVANTAGE
 - ✓ AN INTENTIONAL AND PURPOSEFUL MANIPULATION OF THE SYSTEM TO INSURE THAT ONE PERSON IS FAVORED AND ANOTHER PERSON IS DISADVANTAGED



HIRING OFFENSES

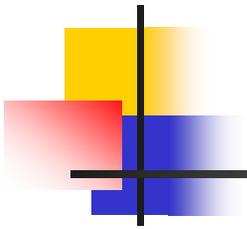
CAVEATS:

- WHILE HIRING OFFENSES USUALLY REQUIRE INTENT TO DECEIVE OR MANIPULATE THE SYSTEM, IF A LAW, RULE, OR REGULATION IMPLEMENTING A MERIT SYSTEM PRINCIPLE IS VIOLATED IN THE PROCESS, THAT WOULD ALSO BE A PROHIBITED PERSONNEL PRACTICE.
- NEGLIGENCE OR IMPRUDENT ACTIONS CAN CREATE THE APPEARANCE OF A HIRING OFFENSE AND RESULT IN COMPLAINTS AND INVESTIGATIONS — E.G., BROADCASTING ONE'S CHOICE BEFORE COMPETITION IS HELD.



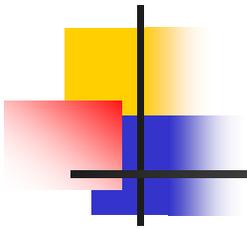
EXAMPLES OF HIRING OFFENSES

- **MANAGER DELIBERATELY FAILS TO HAVE VACANCY ANNOUNCEMENT POSTED, TO PREVENT A PARTICULAR CANDIDATE FROM APPLYING FOR A VACANCY**
- **APPLICATION RECEIVED IS DELIBERATELY MISPLACED OR DESTROYED**
- **SUPERVISOR GIVES AN EMPLOYEE A DISHONEST RECOMMENDATION OR APPRAISAL TO KEEP VALUABLE EMPLOYEE OR TO HELP ANOTHER CANDIDATE**



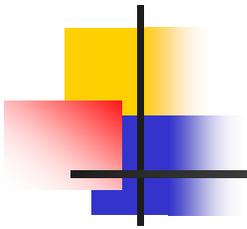
EXAMPLES OF HIRING OFFENSES

- SUPERVISOR ENCOURAGES A SUBORDINATE NOT TO COMPETE, OR TO WITHDRAW HIS OR HER APPLICATION, BY MAKING PROMISES OF FUTURE BENEFITS THAT SUPERVISOR DOES NOT INTEND TO KEEP
- CLOSED VACANCY ANNOUNCEMENT IS RE-OPENED TO PERMIT A FAVORED CANDIDATE TO APPLY



EXAMPLES OF HIRING OFFENSES

- **JOB QUALIFICATIONS ARE MANIPULATED TO FAVOR A PARTICULAR APPLICANT**
- **A SUPERVISOR ADVISES A QUALIFIED EMPLOYEE NOT TO APPLY FOR A JOB IN ORDER TO IMPROVE ANOTHER EMPLOYEE'S CHANCES TO BE SELECTED**

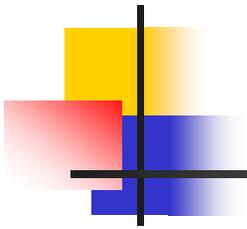


RETALIATION

5 U.S.C. § 2302(b)(8); (b)(9)

TAKING, FAILING TO TAKE, OR THREATENING TO TAKE OR FAIL TO TAKE PERSONNEL ACTION FOR

- PROTECTED WHISTLEBLOWING
- EXERCISE OF APPEAL, COMPLAINT, OR GRIEVANCE RIGHTS
- TESTIMONY OR OTHER ASSISTANCE TO PERSON EXERCISING SUCH RIGHTS
- COOPERATION WITH OR DISCLOSURES TO THE SPECIAL COUNSEL OR AN INSPECTOR GENERAL
- REFUSAL TO OBEY AN ORDER THAT WOULD REQUIRE VIOLATION OF LAW



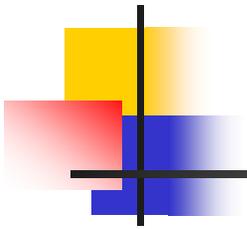
WHISTLEBLOWER PROTECTION

5 U.S.C. § 2302(b)(8)

AN EMPLOYEE WITH PERSONNEL AUTHORITY MAY

NOT—

- TAKE, FAIL TO TAKE, OR THREATEN TO TAKE OR FAIL TO TAKE
- A PERSONNEL ACTION AGAINST AN EMPLOYEE OR APPLICANT
- BECAUSE OF ANY DISCLOSURE OF INFORMATION TO ANY PERSON
- WHICH THE EMPLOYEE OR APPLICANT REASONABLY BELIEVES
- EVIDENCES A VIOLATION OF ANY LAW, RULE OR REGULATION; GROSS MISMANAGEMENT; A GROSS WASTE OF FUNDS; AN ABUSE OF AUTHORITY; OR A SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH AND SAFETY

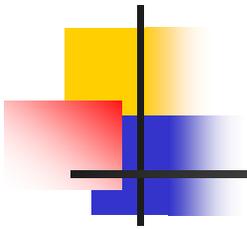


ELEMENTS OF PROOF: REPRISAL FOR WHISTLEBLOWING

5 U.S.C. §§ 1214(b)(4)(A)-(B), 1221(e)

MUST SHOW —

- PROTECTED DISCLOSURE OF INFORMATION UNDER 5 U.S.C. § 2302(b)(8)
- PERSONNEL ACTION TAKEN NOT TAKEN, OR THREATENED
- ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE PROTECTED DISCLOSURE
- PROTECTED DISCLOSURE WAS A CONTRIBUTING FACTOR IN THE PERSONNEL ACTION

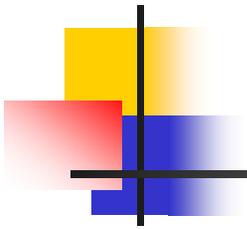


PROTECTED WHISTLEBLOWER DISCLOSURES

5 U.S.C. § 2302(b)(8)

- VIOLATION OF LAW, RULE OR REGULATION
- SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH OR SAFETY
- GROSS WASTE OF FUNDS

MORE THAN A DEBATABLE EXPENDITURE



PROTECTED WHISTLEBLOWER DISCLOSURES *(cont'd)*

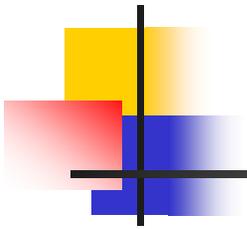
5 U.S.C. § 2302(b)(8)

- GROSS MISMANAGEMENT

MORE THAN *DE MINIMIS* WRONGDOING OR NEGLIGENCE — AN ACTION THAT CREATES A RISK OF SIGNIFICANT ADVERSE IMPACT ON THE ACCOMPLISHMENT OF AN AGENCY'S MISSION

- ABUSE OF AUTHORITY

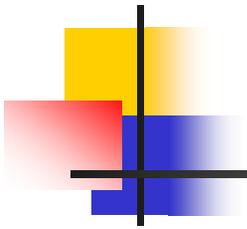
AN ARBITRARY OR CAPRICIOUS EXERCISE OF POWER THAT INJURES ANOTHER, OR BENEFITS THE ABUSER OR OTHERS



PROTECTED WHISTLEBLOWER DISCLOSURES *(cont'd)*

5 U.S.C. § 2302(b)(8)

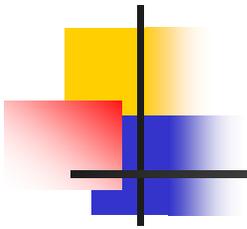
- GENERALLY PROTECTED WHEN MADE TO ANY PERSON (EXCEPT THE WRONGDOER)
- NEED NOT BE ACCURATE TO BE PROTECTED
- PROTECTED IF EMPLOYEE HAS A REASONABLE BELIEF THAT IT IS TRUE — TEST IS BOTH OBJECTIVE AND SUBJECTIVE



PROTECTED WHISTLEBLOWER DISCLOSURES *(cont'd)*

5 U.S.C. § 2302(b)(8)

- NO REQUIREMENT THAT EMPLOYEE GO THROUGH CHAIN OF COMMAND
- WHISTLEBLOWER'S PERSONAL MOTIVATION DOES NOT AFFECT REASONABLENESS OF A DISCLOSURE
- EMPLOYEE OR APPLICANT IS PROTECTED IF EMPLOYER MISTAKENLY BELIEVES HE OR SHE IS A WHISTLEBLOWER

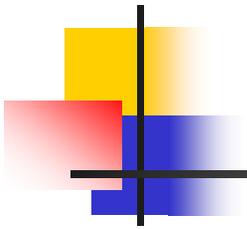


PROTECTED WHISTLEBLOWER DISCLOSURES *(cont'd)*

5 U.S.C. § 2302(b)(8)

DISCLOSURE NOT PROTECTED (UNLESS MADE TO THE
SPECIAL COUNSEL OR INSPECTORS GENERAL), WHERE
DISCLOSURE IS —

- PROHIBITED BY LAW, OR
- REQUIRED BY EXECUTIVE ORDER TO BE SECRET
FOR NATIONAL SECURITY OR FOREIGN AFFAIRS
REASONS



CORRECTIVE ACTION: WHISTLEBLOWER REPRISAL MATTERS

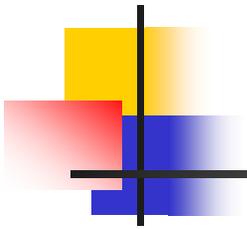
5 U.S.C. §§ 1214(b)(4)(B), 1221(e)(1)

CAN BE OBTAINED IF—

- DISCLOSURE OF INFORMATION WAS A CONTRIBUTING FACTOR IN A PERSONNEL ACTION

UNLESS

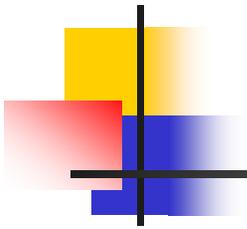
- AGENCY SHOWS BY CLEAR AND CONVINCING EVIDENCE THAT IT WOULD HAVE TAKEN THE SAME PERSONNEL ACTION IN THE ABSENCE OF THE DISCLOSURE



CONTRIBUTING FACTOR

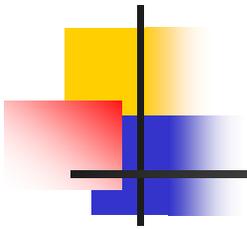
ANY FACTOR WHICH ALONE OR IN CONNECTION WITH OTHERS TENDS TO AFFECT IN ANY WAY THE OUTCOME OF THE PERSONNEL ACTION AT ISSUE

- CAN BE ESTABLISHED BY KNOWLEDGE / TIMING ALONE
- OFTEN ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE



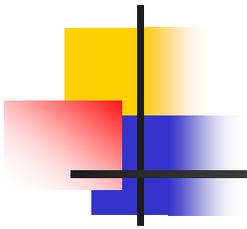
CLEAR AND CONVINCING EVIDENCE (AGENCY DEFENSE)

- AGENCY DEFENDS PERSONNEL ACTION BY SHOWING — BY *CLEAR AND CONVINCING EVIDENCE* — THAT IT WOULD HAVE TAKEN THE SAME ACTION WITHOUT THE DISCLOSURE.
- FACTORS:
 - STRENGTH OF THE EVIDENCE IN SUPPORT OF THE PERSONNEL ACTION
 - EXISTENCE AND STRENGTH OF MOTIVE TO RETALIATE
 - TREATMENT OF SIMILAR EMPLOYEES WHO ARE NOT WHISTLEBLOWERS



OSC'S MANAGEMENT ADVICE

- **BE MEASURED IN YOUR SPEECH AND ACTIONS**
- **KEEP THE MERIT SYSTEMS CONCEPTS ON YOUR RADAR SCREEN**
- **SEEK EXPERT ADVICE WHEN YOU ARE UNSURE**
- **DEAL WITH PROBLEMS AS THEY OCCUR TO AVOID THE APPEARANCE OF BAD MOTIVE**
- **BE CONSISTENT IN YOUR MANAGEMENT OF YOUR EMPLOYEES**
- **DO YOUR BEST NOT TO BE SOMEONE ABOUT WHOM THE WHISTLE IS BLOWN**

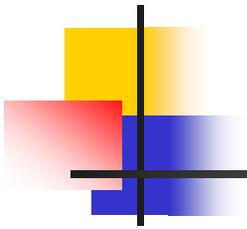


DISCIPLINARY ACTION

5 U.S.C. § 1215

MAY BE SOUGHT BY OSC FOR —

- **PROHIBITED PERSONNEL PRACTICES**
- **HATCH ACT VIOLATIONS**
- **OTHER VIOLATIONS OF CIVIL SERVICE LAW, RULE, OR REGULATION**

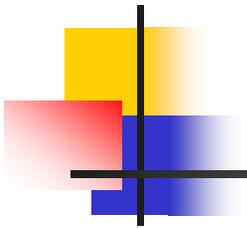


DISCIPLINARY ACTION

5 U.S.C. § 1215

MAY BE SOUGHT BY OSC FROM —

- THE MERIT SYSTEMS PROTECTION BOARD
- AGENCY HEADS (FOR UNIFORMED SERVICE MEMBERS AND CONTRACTORS)
- THE PRESIDENT (FOR MOST PRESIDENTIAL APPOINTEES)

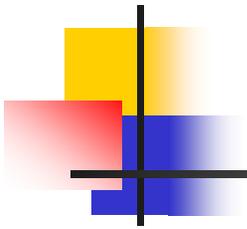


DISCIPLINARY ACTION

5 U.S.C. § 1215

POSSIBLE PENALTIES —

- REMOVAL, REDUCTION IN GRADE, SUSPENSION, OR REPRIMAND
- DEBARMENT FROM FEDERAL EMPLOYMENT (UP TO FIVE YEARS)
- CIVIL PENALTY (UP TO \$1,100)



DISCIPLINARY ACTION

5 U.S.C. § 1215

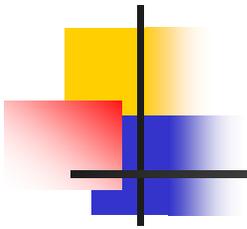
RIGHTS OF CHARGED EMPLOYEE INCLUDE —

- OPPORTUNITY TO RESPOND
- LEGAL OR OTHER REPRESENTATION
- HEARING BEFORE A MERIT SYSTEMS PROTECTION BOARD ADMINISTRATIVE LAW JUDGE
- WRITTEN DECISION

OSC WEB SITE

([HTTP://WWW.OSC.GOV](http://www.osc.gov))

The screenshot shows the U.S. Office of Special Counsel website in Microsoft Internet Explorer. The browser title is "U.S. Office of Special Counsel - Microsoft Internet Explorer". The address bar shows "http://www.osc.gov/". The website header includes the OSC logo, the text "U.S. OFFICE OF SPECIAL COUNSEL", and navigation links: Home, About, Privacy Policy, Site Index, Accessibility, E-Filing, and En Español. A search bar is located below the header. The main content area features a date "Friday, 6 February 2004" and a central diagram titled "Prohibited Personnel Practices" with three nodes: "Whistleblower Disclosures", "Political Activity (Hatch Act)", and "Prohibited Personnel Practices". To the right, a "HEADLINES" section lists: "LATEST OSC PRESS RELEASE: U.S. Office of Special Counsel Announces Senate Confirmation of Scott J. Bloch to Head Agency", "FORMS UPDATED: Revised Complaint Form (OSC-11) and Disclosure Form (OSC-12) Now Available", and "NEW SECTION: E-Library - View OSC Publications, Annual Reports, Speeches, Testimony, Legal Briefs, Policies, Procedures and other significant documents". A left sidebar contains a list of links: Introduction to the OSC, Prohibited Personnel Practices, Whistleblower Disclosures, Political Activity (Hatch Act), Uniformed Services Employment Rights Act, Alternative Dispute Resolution (ADR), Freedom of Information Act, OSC Outreach / 2302(c) Certification Program, Press Releases, E-Library, File Complaints Online, Forms, OSC Contacts and Other Links, and Employment Opportunities. The footer includes "FIRSTGOV Your First Click to the U.S. Government" and "Last Updated: 1/05/04". The Windows taskbar at the bottom shows the start button and several open applications.



OSC PHONE / E-MAIL CONTACTS

COMPLAINTS:

*(PROHIBITED PERSONNEL
PRACTICE, HATCH ACT,
OTHERS)*

(202) 254-3670

(800) 872-9855

DISCLOSURE HOTLINE:

(202) 254-3640

(800) 572-2249

HATCH ACT UNIT:

(800) 85-HATCH

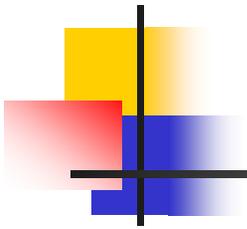
(202) 254-3650

hatchact@osc.gov

PUBLIC INFORMATION / OSC SPEAKERS / OUTREACH:

*CATHY DEEDS
JAMES MCVAY*

(202) 254-3600



OSC MAIL CONTACTS

U.S. OFFICE OF SPECIAL COUNSEL

1730 M STREET, N.W. (SUITE 218)

WASHINGTON, DC 20036-4505



POLITICAL ACTIVITY

AND THE

FEDERAL EMPLOYEE

FEDERAL HATCH ACT



TWO CATEGORIES OF EMPLOYEES:

**EMPLOYEES OF
INTELLIGENCE- AND
ENFORCEMENT-TYPE
AGENCIES
(Further Restricted)**

- Except PAS

**ALL OTHERS
(Less Restricted)**

- GS
- WG
- PAS
- Schedule C
- Noncareer SES

FEDERAL HATCH ACT DOs
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART B



GENERALLY LESS RESTRICTED EMPLOYEES MAY—

1. engage in partisan political campaigning

(e.g., distribute campaign literature, organize campaign events, speak on behalf of a candidate, etc.)

2. engage in partisan political management

(e.g., hold party office, organize party events, serve on a party committee, etc.)

FEDERAL HATCH ACT DON'Ts
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



ALL COVERED EMPLOYEES MAY NOT—

1. USE OFFICIAL AUTHORITY OR INFLUENCE TO INTERFERE WITH AN ELECTION

- **Use of official title (generic title or “The Honorable”)**
- **Coerce subordinates**
- **Solicit the uncompensated volunteer services of subordinates**
- **Provide names/addresses of employees to candidate/campaign**

FEDERAL HATCH ACT DON'Ts
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



**2. SOLICIT OR DISCOURAGE POLITICAL
ACTIVITY OF ANYONE WITH BUSINESS
BEFORE THEIR AGENCY**

FEDERAL HATCH ACT DON'Ts
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



3. SOLICIT OR RECEIVE POLITICAL CONTRIBUTIONS

- **Solicitation letters**
- **Fundraisers**
- **Phone banks**

(A covered employee may host a meet and greet, serve as campaign or party treasurer and speak at a fundraiser)

FEDERAL HATCH ACT DON'Ts
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



4. BE CANDIDATES FOR PUBLIC OFFICE IN PARTISAN ELECTIONS

- **Nonpartisan elections**
- **Designated localities**
- **Write-in candidacy**
- **Party office (e.g., precinct committee person)**

CANDIDACY

5 U.S.C. § 7323



WHEN DOES IT BEGIN?

- **WHEN AN INDIVIDUAL BEGINS TO COLLECT SIGNATURES FOR NOMINATING PETITIONS**
- **WHEN AN INDIVIDUAL BEGINS TO FUNDRAISE**
- **WHEN AN INDIVIDUAL MAKES AN ANNOUNCEMENT TO THE PRESS**

BEWARE OF NONPARTISAN ELECTIONS/CANDIDACIES

5 U.S.C. § 7323



Nonpartisan can transform to partisan when:

- Employee/candidate seeks and receives endorsement of political party.
- Employee/candidate advertises endorsement of political party.
- Employee/candidate uses political party resources.
- Employee/candidate announces he is a political party candidate.

Key: There is evidence showing that partisan politics actually entered the campaign of a candidate.

FEDERAL HATCH ACT DON'Ts
5 U.S.C. § 7324; 5 C.F.R. PART 734, SUBPART C



5. ENGAGE IN POLITICAL ACTIVITY WHILE —

- **ON DUTY**
- **IN A GOVERNMENT OFFICE**
- **WEARING AN OFFICIAL UNIFORM**
- **USING A GOVERNMENT VEHICLE**

(exception: some PAS/EOP employees)

FEDERAL HATCH ACT
5 U.S.C. § 7324; 5 C.F.R. PART 734.101



POLITICAL ACTIVITY MEANS:

**AN ACTIVITY DIRECTED TOWARD THE SUCCESS OR FAILURE
OF A —**

- **POLITICAL PARTY**
- **CANDIDATE FOR PARTISAN POLITICAL
OFFICE, OR**

- **PARTISAN POLITICAL GROUP**

FEDERAL HATCH ACT
5 U.S.C. § 7324; 5 C.F.R. PART 734.101



Prohibited Political Activity (Examples)

- Buttons, posters, coffee mugs, etc. in the workplace with the following messages:

“Vote for”

“I support”

“Register for”

- Bumper stickers on government cars
- E-mail

FEDERAL HATCH ACT
5 U.S.C. § 7324; 5 C.F.R. PART 734.101



Not Prohibited Political Activity
(Examples):

- **NRA**
- **“Crime control not gun control”**
- **“Right to life”**
- **“Pro-choice”**
- **“I support the war”**
- **“Peace not war”**

FEDERAL HATCH ACT: EOP / PAS COVERAGE

5 U.S.C. § 7324(b); 5 C.F.R. PART 734, SUBPART E



EMPLOYEES —

Duties and responsibilities continue outside normal duty hours and while away from the normal duty post and

1- paid from an appropriation for the (EOP), or

2- appointed by the President and Senate-confirmed (PAS)

who —

A) occupy positions located in the U.S., and

B) determine policies to be pursued in

- relations with foreign powers, or
- nationwide administration of federal laws

**FEDERAL HATCH ACT:
EOP / PAS COVERAGE (CONT'D)**
5 U.S.C. § 7324(b); 5 C.F.R. PART 734, SUBPART E



SUCH PAS and EOP EMPLOYEES MAY ENGAGE IN POLITICAL ACTIVITY WHILE —

- ***ON DUTY***
- ***IN A GOVERNMENT ROOM OR BUILDING***
- ***WEARING A UNIFORM OR OFFICIAL INSIGNIA***
- ***USING A GOVERNMENT VEHICLE***

IF COSTS ASSOCIATED WITH POLITICAL ACTIVITY ARE NOT PAID FOR BY MONEY DERIVED FROM THE U.S. TREASURY

FEDERAL HATCH ACT: RESTRICTED AGENCIES

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



- **CRIMINAL DIVISION (DOJ)**
- **CENTRAL INTELLIGENCE AGENCY**
- **DEFENSE INTELLIGENCE AGENCY**
- **FEDERAL BUREAU OF INVESTIGATION**
- **FEDERAL ELECTIONS COMMISSION**
- **MERIT SYSTEMS PROTECTION BOARD**
- **NATIONAL IMAGERY AND MAPPING AGENCY**

FEDERAL HATCH ACT: RESTRICTED AGENCIES

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



- NATIONAL SECURITY AGENCY
- NATIONAL SECURITY COUNCIL
- OFFICE OF CRIMINAL INVESTIGATION (IRS)
- OFFICE OF INVESTIGATIVE PROGRAMS (CUSTOMS)
- OFFICE OF LAW ENFORCEMENT (BATF)
- OFFICE OF SPECIAL COUNSEL
- SECRET SERVICE

**FEDERAL HATCH ACT:
RESTRICTED POSITIONS**
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



- **CAREER SES**
- **ADMINISTRATIVE LAW JUDGES**
- **MEMBERS OF CONTRACTS APPEALS
BOARDS**

**FEDERAL HATCH ACT DON'Ts:
FURTHER RESTRICTED EMPLOYEES**
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



**FURTHER RESTRICTED EMPLOYEES MAY NOT ENGAGE IN
PARTISAN POLITICAL CAMPAIGNING AND POLITICAL
MANAGEMENT-**

- **Make campaign speeches**
 - **Distribute campaign literature**
 - **Organize a political rally, meeting or fundraiser**
 - **Hold political party office or be a party delegate**
 - **Participate in partisan voter registration drives**
 - **Circulate nominating petitions**
-
- **KEY: NO ACTIVITY IN CONCERT WITH A POLITICAL PARTY OR CANDIDATE**

**FEDERAL HATCH ACT DOs:
FURTHER RESTRICTED EMPLOYEES**
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



FURTHER RESTRICTED EMPLOYEES

MAY—

- **Join political clubs or parties**
- **Express opinions about candidates and issues**
- **Sign nominating petitions**
- **Attend political rallies and conventions**
- **Participate in nonpartisan activities**

PENALTIES FOR VIOLATION (FEDERAL HATCH ACT)

5 U.S.C. § 7326



MERIT SYSTEMS PROTECTION BOARD MAY ORDER
EMPLOYEE'S —

- REMOVAL

OR

- SUSPENSION (30-DAY MINIMUM)

FEDERAL HATCH ACT: OSC PHONE / E-MAIL CONTACTS



HATCH ACT UNIT:

(800) 85-HATCH

(202) 254-3650

hatchact@osc.gov

OSC SPEAKERS / OUTREACH:

(202) 254-3650