


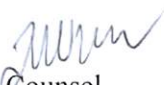
OFFICE OF THE GENERAL COUNSEL
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
Affiliated with AFL-CIO
80 F Street, NW | Washington, DC 20001

MEMORANDUM: 7/

DATE: July 24, 2018

To: National Executive Council

Thru: David A. Borer 
General Counsel

From: J. Ward Morrow 
Assistant General Counsel

Re: Hatch Act Legality of Wear Red for Feds in the workplace

I have had several discussions with Anna Galinda-Marrone, Chief of the OSC Hatch Act unit over the past several days regarding wearing red on Wednesday. She indicated late yesterday that she has not received any calls or emails from any agency management or employees related to this, only my inquiry. Ms. Galinda-Marrone and I discussed the matter at some length, and agree that **wearing red while on duty, in and of itself, is not a Hatch Act violation**. Since OSC has not received a single inquiry other than mine, they are *not* going to draft an emergency opinion on this.

Please bear in mind that the Hatch Act is not the only possible restriction that may come into play. Multiple locals and individuals have drafted their own materials for this event, some of which have been vetted for the worksite, some for non-worksite use; others are likely using material they have not vetted through GCO. As always, care must be taken: any material that could be viewed as making references to political parties or candidates cannot be sent to or circulated at the work site. However, the color of one's pen, tie, socks, jacket, hat, umbrella, shoes, nail polish, shirt, scarf, etc. ... would not be an issue; red is fine with the exception described below.

The exception is that some agencies, or specific positions within an agency, require wearing of a uniform. If a uniform is required, or "appropriate attire" when interacting with the public is required, those restrictions still apply; that's separate from the Hatch Act. In other words, supervision may prohibit those in uniform or with certain dress code requirements from wearing red when doing so violates those requirements. If employees are routinely allowed to wear other 'statement' accessories like buttons supporting a cause, Christmas or Hanukah pins, black ribbons for mourning a death, etc., those examples may be raised as arguments why they should be allowed to wear red. However, as always, this is an obey now, grieve later situation. Anyone told to take it off should comply with that order; don't risk insubordination.

If anyone receives a written instruction that they cannot wear anything red on Wednesday, but could on any other day, GCO needs details to review this immediately.

OSC did express concern if someone in the workplace asks why an employee(s) is wearing red; like any conversation of current affairs at the worksite, that could quickly become political and could potentially become a Hatch Act issue. Avoid any discussion of the political candidates and political parties in the context of the Executive Orders. All members, officers, and staff, should respond that this is a show of union solidarity in support of our litigation over the Executive Orders. It's okay to discuss:

- the orders themselves with co-workers,
- the impact the orders may have, and
- the legal arguments made by union counsel.

These activities/topics among coworkers are not prohibited by the Hatch Act, or any Anti-Lobbying Act restrictions. However, having these discussions while interacting with the public and while on duty could be governed by agency specific rules, regulations, or policies.

Finally, no one should be on official time while engaging in any offsite actions related to this activity; off-duty status/lunch break status should be properly recorded should it become an issue later. While offsite and off duty, the Hatch Act does not apply to our discussion of political concerns. Since this activity also has an on-duty aspect, we should strongly consider that our off-duty talking points may well be used on site. Discussion on Wednesday should proceed on the merits of the issue, or be clear that members should not further discuss any political aspects on government property. After the event has concluded, and as to any other issues, this is not of heightened concern from our established practices of political discussions when offsite.

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