

Karin Brownlee, Secretary

Sam Brownback, Governor

MEMORANDUM

To: Senate Committee on Commerce
From: Kathie Sparks, Deputy Secretary of Labor
Date: February 7, 2012
Re: SB 352

Thank you Chair Wagle, for allowing us to appear as proponents of SB 352. The following is an outline of the changes the bill proposes in current Employment Security Law.

Section 1

- p. 1, l. 26: provides that all parties are entitled to a neutral interpretation of the Employment Security Law.

Section 2

- p. 2, l. 25-31: removes alternative base period
 - was only implemented to get ARRA funds
 - are gone, so no need for alternative base period
 - to administer
- p. 6, l. 15-17: reconciles with 2011 HB 2135
- p. 7, l. 40-43: same
- p. 14, l. 20: changes administration of "employment centers" to Department of Commerce

Section 3

- p. 23, l. 34 & 36: clarifies that all 3 must be met for alternative base period for claimants returning from injury

Section 4

- reorganizes disqualification subsection as it relates to drug and alcohol use and asking for an amendment to add a third condition; which reads *(iii) violation of a written drug or alcohol policy of the employer of which the employee had knowledge and which constituted a required condition of employment*
- reorganizes disqualification subsection as it relates to attendance and lateness; also adds "lateness" and removes exception for absences on weekends and holidays
- p. 32, l. 1-4: harmonizes UI law with *Redline Express* case
 - no benefits after notice to quit
 - can be disqualified for notice period if commit misconduct
- p. 33, l. 41-43: doubles penalty for fraud

Section 5

- p. 39: allows untimely appeals if excusable neglect

Senate Commerce Committee

Date: February 7, 2012

Attachment 1

- allows for KDOL to appeals referee decisions

Section 6

- p. 44: changes the definition of "part-time employment" to read *part-time is any employment when an individual works less than full-time*

Section 7

- p. 52, 53: removes unconstitutional language prohibiting political activity by KDOL employees engaged in the administration of the UI law; allows free participation to fullest extent consistent with the restrictions imposed by law (Hatch Act). More info at <http://www.osc.gov/hatchact.htm> (See attachment)

Section 8

- p. 60: changes admin of state employment service to Department of Commerce

Section 9

- p. 69, l. 3-5: ties interest rate on overpaid contributions to rate we receive on trust fund
- p. 70, l. 29-32: requires employers with 14 or more employees to electronically file.

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January 30, 2012

Less Restricted EmployeesLess Restricted Employees – Political Restrictions and Prohibited Activities

The Hatch Act prohibits less restricted federal employees from:

- *May not* use their official authority or influence to interfere with or affect the result of an election. For example:
 - *May not* use their official titles or positions while engaged in political activity.
 - *May not* invite subordinate employees to political events or otherwise suggest to subordinates that they attend political events or undertake any partisan political activity.
- *May not* solicit, accept or receive a donation or contribution for a partisan political party, candidate for partisan political office, or partisan political group. For example:
 - *May not* host a political fundraiser.
 - *May not* invite others to a political fundraiser.
 - *May not* collect contributions or sell tickets to political fundraising functions.*
- *May not* be candidates for public office in partisan political elections.
- *May not* knowingly solicit or discourage the participation in any political activity of anyone who has business pending before their employing office.
- *May not* engage in political activity – *i.e.*, activity directed at the success or failure of a political party, candidate for partisan political office, or partisan political group – while the employee is on duty, in any federal room or building, while wearing a uniform or official insignia, or using any federally owned or leased vehicle. For example:
 - *May not* distribute campaign materials or items.
 - *May not* display campaign materials or items.
 - *May not* perform campaign related chores.
 - *May not* wear or display partisan political buttons, T-shirts, signs, or other items.
 - *May not* make political contributions to a partisan political party, candidate for partisan political office, or partisan political group.
 - *May not* post a comment to a blog or a social media site that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group.
 - *May not* use any e-mail account or social media to distribute, send, or forward content that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group.

* Soliciting, accepting, or receiving such donations or contributions may be done so long as the person being solicited is: 1) a member of the same federal labor organization as defined under section 7103(4) of this title or a federal employee organization which as of the date of enactment of the Hatch Act Reform Amendments of 1993 had a multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4))); 2) not a subordinate employee; and 3) the solicitation is for a contribution to the multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4))) of such federal labor organization as defined under section 7103(4) of this title or a federal employee organization which as of the date of the enactment of the Hatch Act Reform Amendments of 1993 had a multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2) U.S.C. 441a(a)(4))).

Last Updated: 9/28/11

POLITICAL ACTIVITY AND THE STATE AND LOCAL EMPLOYEE

BY
THE U.S. OFFICE OF SPECIAL COUNSEL

The Hatch Act restricts the political activity of individuals principally employed by state, county or municipal executive agencies who work in connection with programs financed in whole or in part by federal loans or grants. An officer or employee of a state or local agency is covered by the Hatch Act, if he or she has duties in connection with an activity financed in whole or in part by federal funds. These state and local employees:

may be candidates for public office in nonpartisan elections, *i.e.*, an election where no candidates are running with party affiliation.

EXAMPLE: An employee may run for the school board in Washington D.C., as long as the school board elections in Washington D.C. remain nonpartisan.

may hold elective office in political parties, clubs and organizations.

EXAMPLE: An employee may serve as the vice president of the local Democratic or Republican party.

may be appointed to fill a vacancy for an elective office.

EXAMPLE: An employee may be appointed to finish the unexpired term of an elected officeholder. The employee may not run for reelection if the election is partisan.

may actively campaign for candidates for public office in partisan and nonpartisan elections.

EXAMPLE: An employee may campaign for candidates by making speeches, writing letters, working at the polls on election day and organizing political rallies and meetings.

may contribute money to political organizations.

EXAMPLE: An employee may make a monetary contribution to any candidate, political party, club or organization.

may attend and give a speech at a political fundraiser, rally or meeting.

EXAMPLE: An employee may attend and give a speech or keynote address at a political fundraiser.

There continue to be important restrictions on employees' political activity. State and local employees:

may not be candidates for public office in partisan elections.

EXAMPLE: An employee may not run for office in an election where any of the candidates are running as representatives of a political party, e.g., the Democratic or Republican party.

may not use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.

EXAMPLE: A supervisor should not ask a subordinate employee to volunteer for a political party.

may not directly or indirectly coerce contributions from other state or local employees.

EXAMPLE: A supervisor should not advise employees that they may purchase tickets to a fundraising event.

may not orchestrate a "write-in" candidacy during a partisan election.

EXAMPLE: An employee may not solicit voters to write his name on the ballot on election day.

CAUTION: An employee's conduct is also subject to the laws of the state and regulations of the employing agency. State or local laws do not affect the prohibitions of the Hatch Act.

State and Local Employees Who Are Not Covered By The Hatch Act:

Individuals who have no duties in connection with federally funded activities and individuals employed by publicly financed educational or research institutions, including state university systems and local public school systems are not covered by the Hatch Act.

Application of the Hatch Act to employees of private nonprofit organizations:

The Hatch Act applies to employees of private non-profit organizations only if the statute through which the organization derives its federal funding contains a provision, which states that recipient organizations shall be deemed to be state or local government agencies for purposes of the Hatch Act.

The U.S. Office of Special Counsel and the Hatch Act:

The U.S. Office of Special Counsel (OSC) is authorized by law to provide Hatch Act advisory opinions. Employees and members of the public are encouraged to write to OSC with specific questions that address permitted and prohibited activities under the Hatch Act.

OSC is also responsible for enforcing the Hatch Act. OSC receives complaints alleging Hatch Act violations, investigates the complaints and where warranted, prosecutes cases before the Merit Systems Protection Board.

If the Merit Systems Protection Board finds that the offense warrants dismissal from employment, the employing agency must either:

- (1) dismiss the employee or
- (2) forfeit a portion of the federal assistance equal to two years salary of the employee.

How to file a Hatch Act Complaint:

Individuals may report suspected violations of the Hatch Act to OSC. Complaints should be submitted in writing to:



HATCH ACT UNIT

U.S. Office of Special Counsel
1730 M Street, NW (Suite 218)
Washington, DC 2003 6-4505
Tel: (800) 85-HATCH (800-854-2824)
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