



LEAGUE OF OREGON CITIES

FAQ

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# FAQ about Restrictions on Political Campaigning by Public Employees

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## Restrictions on Political Campaigning by Public Employees: Frequently Asked Questions (FAQ)

Public employees are required to follow certain laws and regulations that do not apply to private employees. For example, state and federal laws place important restrictions on public employees who engage in political activity. This FAQ is designed to provide some basic information on prohibitions on political activity by public employees. It is not designed to provide legal advice or serve as a substitute for legal counsel. City officials are encouraged to consult with their city attorney if they have specific questions about whether a certain course of conduct conforms to the law.

### 1. Are Public Employees Prohibited from Engaging in Political Activity?

Yes, in certain situations. All citizens have the right to engage in political discourse, assemble and petition the government for a redress of grievances. Indeed, free political discourse has been described as a “political duty,” and the “fundamental principle of American government.”<sup>1</sup> Like all rights, however, the right to political discourse is not absolute. Federal and state laws limit where and when public employees may engage in political activity.<sup>2</sup> In Oregon, **ORS 260.432** prohibits public employees from engaging in political activity while on the job during working hours.

### 2. When Does ORS 260.432 Apply?

ORS 260.432 applies in the following circumstances:

- For initiative, referendum and recall petition efforts, as soon as the prospective petition is filed with the appropriate elections filing officer.
- For a ballot measure referred by a governing body as soon as the measure is certified to the ballot. A county, city, or district measure is certified to the ballot when the elections official files the referral with the county election office.
- For a candidate, as soon as the person becomes a candidate under the definition in ORS 260.005(1)(a).
- For political committees, whenever the political committee is active.

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<sup>1</sup> *Whitney v. California*, 274 US 357, 375 (1927) (Brandeis, J., concurring), *overruled in part by Brandenburg v. Ohio*, 395 US 444 (1969).

<sup>2</sup> Certain public employees—including state and local who work in federally funded programs—are prohibited from engaging in specified political activities under the 1939 Hatch Act, 5 U.S.C. §§ 1501–1508. The U.S. Office of Special Counsel investigates alleged violations of the federal Hatch Act. For additional information, please visit <https://osc.gov/pages/hatchact.aspx>.

### **3. What Does ORS 260.432 Prohibit?**

Essentially, ORS 260.432 prohibits public employees from using their work time to support or oppose measures, candidates, recalls, petitions or political committees. Supporting or opposing political issues that do not fall into any of those categories is not prohibited.

It may be easier to conceptualize ORS 260.432 by breaking the prohibition down into its elements:

- a) Public employees may not;
- b) Support or oppose measures, candidates, recalls, petitions, or political committees;
- c) While on the job during working hours.

### **4. Can Public Employees Express Personal Political Views While on the Job?**

Yes. Public employees generally may display political stickers on their personal vehicle and post political signs in their workplace, subject to employer policies. Also, the law does not restrict the right of a public employee to verbally express political views during their personal time. Public employees may wear political buttons or clothing on the job so long as doing so does not violate their employer's policies.

As an example, suppose Measure 123 will fund a new city library. City employees are permitted to wear buttons or shirts that say, "Vote Yes on Measure 123" while on the job. The city itself would be prohibited, however, from distributing those same buttons and sending an email encouraging city employees to wear the buttons on election day.

Finally, note that public employee unions are permitted to have designated bulletin boards to post information in the workplace. The content of a union bulletin board is determined through collective bargaining and is not subject to ORS 260.432.

### **5. Who is a "Public Employee"?**

A "public employee" is anyone employed by a "public employer," as that term is used in ORS 260.432(5)(b). Public employers include the state, counties, cities and districts. Some examples of who is and who is not a public employee include:

- Appointed board members and commissioners are considered "public employees" when acting in their official capacity.
- Volunteers that receive no compensation are not public employees.
- Contractors are not public employees, but public employees are prohibited from directing government contractors to engage in political activity as part of the contracting service.

### **5. Are Elected Officials "Public Employees"?**

No. Under ORS 260.432(4), elected officials are not considered public employees. However, elected officials are prohibited from directing other non-elected public employees to engage in political activity.

## **6. Can a City Council Require City Employees to Distribute Flyers in Support of a Local Ballot Initiative?**

No. As noted above, elected officials are prohibited from directing non-elected public employees to engage in prohibited political activities.

## **7. When is a Public Employee “On the Job?”**

It is not always easy to determine when an employee is on the job, especially a salaried employee. Generally, an employee is “on the job” while performing work in an official capacity, regardless of when or where the work is performed. For example, if a school principal attends an evening PTA meeting at her school, the principal is prohibited from asking parents to vote in favor of a local ballot measure that would help raise money for the school district. The school principal is performing one of her essential job duties by meeting with parents at the PTA meeting, and so cannot engage in prohibited political activity.

Further, if a public employee applies for an expense reimbursement for a certain function, that function is considered part of the employee’s official capacity.

The following is a list of common activities that are always performed in an official capacity:

- Posting material to an official website.
- Drafting or distributing an official publication.
- Appearing at an event as the representative of the jurisdiction.

## **8. I Want to Engage in Political Activity During my Personal Time, but Everyone Knows I’m a Public Employee. What Should I Do?**

ORS 260.432 only prohibits politically activity when a public employee is acting in an official capacity. Public employees are free to engage in political activity when acting in a personal capacity. If there is any potential for confusion about whether an employee is acting in a personal or official capacity, the employee should state that they are acting solely in their personal capacity and do not represent the views of their employer.

## **9. Are Public Employee Permitted to Engage in Legal Challenges?**

Public employees are permitted to engage in legal court challenges as a part of their official capacity. Public employees may testify, provide declarations or affidavits, and respond to discovery requests.

## **10. Are Public Employees Permitted to Engage in Lobbying?**

Legislation is not covered by ORS 260.432. Thus, public employees are free to lobby governing bodies.

## **11. Can a Public Body Make Public Property Available for Political Activity?**

Yes. A public body may make its property available for political activities, but must grant equal access for all political groups to use the property. Equal access includes charging the same fee or

requiring the same permit of all groups. Note that public agencies may have their own policies regarding the use of public property for political activities.

## **12. What if Someone Thinks that a Public Employee is Improperly Engaging in Political Campaigning?**

Any Oregon elector is permitted to file a complaint with the Secretary of State Elections Division alleging that a public employee or employees violated ORS 260.432. The Elections Division can also initiate its own investigation.

## **14. How Can I Contact the Elections Division?**

255 Capitol Street NE, Suite 501  
Salem, OR 97310-0722  
Tel: 503-986-1518  
Fax: 503-373-7414  
[www.oregonvotes.gov](http://www.oregonvotes.gov)

## **13. Can a Public Employee be Liable for Engaging in Prohibited Political Activity?**

The Elections Division has authority to issue civil penalties for violations of ORS 260.432. Alleged violators are permitted to contest those penalties in an administrative hearing process.

## Appendix A: Key Provisions of ORS 260.432

“(1) No person shall attempt to, or actually, coerce, command or require a public employee to influence or give money, service or other thing of value to promote or oppose any political committee or to promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder.

“(2) No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public officer holder while on the job during working hours. However, this section does not restrict the right of a public employee to express personal political views.

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“(4) Nothing in this section prohibits an employee of the legislative branch from explaining the vote of a member of the Legislative Assembly on:

“(a) An Act that has been referred to the people by law or petition under section 1(3), Article IV of the Oregon Constitution;

“(b) An Act for which a prospective referendum petition has been filed under ORS 250.045; or

“(c) A constitutional amendment or revision proposed under section 1 or 2, Article XVII of the Oregon Constitution.

“(5) As used in this section:

“(a) ‘Public employee’ does not include an elected official or a person appointed as a director to the board of a pilot education service district under ORS 334.108.

“(b) ‘Public employer’ includes any board, commission, committee, department, division or institution in the executive, administrative, legislative or judicial branch of state government, and any county, city, district or other municipal corporation or public corporation organized for a public purpose, including a cooperative body formed between municipal or public corporations.”