



FAQ



FAQ: Restrictions on Political Campaigning by Public Employees

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Frequently Asked Questions:

Restrictions on Political Campaigning by Public Employees

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.”¹ 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.² 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).³

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

² 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/Services/Pages/HatchAct-FileComplaint.aspx>.

³ Candidate, pursuant to ORS 260.005(1)(a), means (1) an individual whose name is printed on a ballot, for whom a declaration of candidacy, nominating petition or certificate of nomination to public office has been filed or whose name is expected to be or has been presented, with the individual’s consent, for nominations or election to public office; (2) an individual who has solicited or received an accepted a contribution, made an expenditure, or given consent to an individual, organization, political party or political committee to solicit or receive and accept a contribution or make an expenditure on the individual’s behalf to secure nomination or election to any public office at any time, whether or not the office for which the individual will seek nomination or election is known when the

- For political committees, whenever the political committee is active.

The prohibition ceases to apply at 8 pm on the date of the election at which the candidate, measure, recall or referendum is being voted on. The prohibition ceases to apply to a petition (initiative, referendum or recall) on the date the petition is withdrawn or becomes void.⁴

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.⁵

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(6)(b). Public employers include the state, counties, cities and districts. Some examples of who is and who is not a public employee include:

solicitation is made, the contribution is received and retained or the expenditure is made, and whether or not the name of the individual is printed on a ballot; or (3) a public office holder against whom a recall petition has been completed and filed.

⁴ See Secretary of State *Restrictions on Political Advocacy by Public Employees*, p. 6-7.

<https://sos.oregon.gov/elections/documents/restrictions.pdf>.

⁵ Except as prohibited under National Voter Registration Act (NVRA) and ORS 247.208(3).

- 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(6)(a), 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. A request made by an elected official is considered a command.

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 and being compensated, regardless of when or where the work is performed.

For example, if a school principal attends an evening Parent Teachers Association (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 compensated 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 Employees Permitted to Engage in Lobbying?

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

10. 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.

11. 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.

12. How Can I Contact the Elections Division?

Public Service Building Suite 126
255 Capitol St. NE
Salem OR 97310
503-986-1518
Toll free 1-866-673-VOTE (1-866-673-8683)
Fax 503-373-7414
TTY 800-735-2900
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.

14. Where can I find additional information about the restrictions on political campaigning by public employees?

The Elections Division has published a 19-page document entitled [Restrictions on Political Advocacy by Public Employees](#), explaining the roles public employees can and cannot play regarding political campaigns.