



## What You Can and Cannot Do as a Federal Employee!

You did not relinquish your rights as a condition of employment with the federal government. In fact, you have rights under the law and your NTEU contract that most of your private-sector counterparts don't. Over the years, NTEU has worked on Capitol Hill, in the courts and at bargaining tables to build and expand those rights. But you can't exercise them if you don't know what they are. Inside these pages are answers to commonly-asked questions about a range of topics. You can always get more information from your NTEU representative. And yes — federal law and your NTEU contract guarantee your right to meet with your union steward for help with these issues and much more.

### Can I Express Partisan Political Opinions on Social Media?

it depends

Social media is everywhere, and it has dramatically altered political communication.

Politicians are using social media to take their positions directly to voters, who can immediately respond and offer up their own two cents. But how freely can federal employees express political opinions on social media?

In 2018, the Office of Special Counsel updated its Hatch Act social media guidelines for federal employees which spell out situations when it's acceptable, or not, to engage in social media.

In general, all federal employees may use social media and comply with the Hatch Act if they remember these three rules:

- 1. Don't engage in political activity while on duty, using government equipment or in the federal workplace.
- 2. You may not solicit, accept or receive a political contribution for a political party, candidate in a partisan race, or partisan political group.
- 3. You may not use your official authority or influence to affect the outcome of an election.

All employees, at any time, may include their official title or position and agency in their social media profile. This is permitted even if you mention your political affiliation or use your account to engage in political activity.

Employees may also continue to follow, be friends with, or like the official social media accounts of government officials after they become candidates for reelection.

#### Can I Do That?

You are at home after work and you tweet a message from your personal cell phone encouraging others to vote for a candidate in a partisan race.	YES
You are on duty and looking at Facebook on your personal cell phone. You see that a friend posted a message encouraging others to vote for members of a certain political party and want to share that message on duty.	NO
You follow the official government Twitter account of a member of Congress, who has just announced her candidacy for reelection and want to continue following her official account.	YES
You are teleworking and on a paid break. You look at Facebook on your personal cell phone and see that a Senate candidate posted a message asking for votes on Election Day and want to post a supportive comment.	NO

Source: U.S. Office of Special Counsel

### Can I Meet with My Union Rep?

yes

You have the right to NTEU representation in the workplace, and that starts with meeting with a union leader. NTEU local leaders, also known as stewards, receive extensive training on a host of workplace issues and they are in your workplace, ready to help you.

There is a misconception that employees only need a union representative when they are facing discipline and want to file a grievance. While it's true that NTEU leaders help employees file grievances if they are treated unfairly or management violates the contract, stewards are also a valuable resource. They can provide advice on topics ranging from FMLA to performance evaluations to retirement. NTEU leaders have also helped employees with telework requests and conversations with managers that have helped resolve workplace issues.

Got ideas for improving the workplace? Your NTEU leader can help bring them to management.

Although many workplaces continue to be closed due to the pandemic, your NTEU leaders remain hard at work helping employees. They have been working around the clock to help with issues, such as individual leave and telework.

### Can I Engage in Political Activities While Teleworking?

no

An unprecedented number of federal employees are working from home, which can blur the lines between "on duty" and personal activities. However, the Hatch Act prohibiting employees from engaging in political activity while on duty still applies to teleworkers.

This was the message from the Office of Special Counsel (OSC) in guidance for teleworkers clarifying when they are considered "on duty" and how the Hatch Act applies during video conferences.

The definition of "on duty" at home is similar to what it would be for employees in an office. OSC considers federal employees on duty when they are "in a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay)." Employees are also on duty if they are representing their agency in an official capacity. Unless agency policy says otherwise, employees are not considered on duty during their lunch break.

Employees participating in virtual work-related conferences (such as Zoom, Skype or Teams) are considered on duty and subject to Hatch Act restrictions. This means employees should avoid wearing campaign T-shirts or hats while participating in a work-related video conference call and make sure partisan materials, like campaign signs or candidate pictures, are not visible during the call. Employees should also be careful not to use candidate images, campaign slogans or political party symbols for profile pictures associated with official accounts.



**Tony Reardon**  
*National President*

## Staying the Course on Legislation

We recently crossed the 100-day mark until the end of the fiscal year.

If you're like me, that stark reminder of a rapidly approaching deadline sent a slight chill down your spine.

In a normal year, federal employees look toward Oct. 1 with dread, wondering if it means that appropriations will lapse and government will shut down.

In this historic summer of 2020 — with a global pandemic, economic downturn and national uprising against systemic racism — the process of keeping our government properly funded understandably feels like it has taken a back seat.

I assure you, it has not.

We remain locked on the health and safety issues of the federal workforce during the pandemic, but our union's 2020 legislative agenda is also in full swing.

Every single issue on our agenda this year affects you, your job, your income, your family and your future. I encourage all NTEU members to take a moment to educate yourself on them and consider sharing your views with your representatives in Congress. Votes may be forthcoming, and they need to know that the federal employees in their districts or states are paying attention.

Obviously, avoiding a government shutdown and giving federal agencies an adequate level of support for the 2021 fiscal year is a perennial issue. The appropriations process has been unorthodox in recent years but in the end, we need spending levels that allow agencies to maintain — or increase — staffing levels, upgrade technology and do the work the American people expect.

We are also supporting efforts to help Customs and Border Protection make up for lost user fees and add staff, plus an increase for the IRS to make up for massive budget cuts since 2010.

The issue of a fair pay raise for federal employees is another recurring battle. We are working with our allies on the Hill — and there are many — to pass legislation providing a fair increase for the federal workforce in 2021. The administration is seeking a 1 percent hike but we believe federal employees, who stayed on the job and kept this country operating during this pandemic, deserve more.

On benefits, we are trying to capitalize on the addition of a paid parental leave program with an expansion to paid family leave, giving federal employees more time to care for critically ill family members.

Those in Congress who disrespect federal employees always have legislation to slash retirement benefits, make health insurance more expensive and eliminate entire agencies. Anybody who thinks they can try to reduce the federal debt on the backs of federal employee benefits will have NTEU to reckon with.

Finally, the president's 2018 executive orders continue to be a threat to your rights in the workplace. To help us fight those restrictions, we are backing S. 3146 which would prevent agencies from implementing any collective bargaining agreement that was not mutually and voluntarily agreed to by all parties or subject to binding arbitration. We are also supporting S. 530 and H.R. 1316 to re-establish the National Council on Federal-Labor Management Relations. Customizable letters to your lawmakers in support of these bills are also available on NTEU's Legislative Action Center.

Even in the midst of a public health crisis, the gears of government keep turning which means NTEU has to stay sharp and mobilize our members to make sure Congress delivers the agency funding, pay and protections that federal employees deserve.



### **NTEU MISSION**

To organize federal  
employees to work  
together to ensure that  
every federal employee  
is treated with dignity  
and respect.

## **NTEU**Bulletin

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# Can I Have Union Representation During Investigatory Interviews?



Local NTEU leaders are responsible for many jobs, and one of the most important is to attend and participate in investigatory interviews. They are there to help clarify questions and answers or suggest additional witnesses or sources for facts.

The Civil Service Reform Act gives unions the right to represent employees in these investigatory interviews. This right to representation is commonly called the Weingarten right after the 1975 Supreme Court decision that held an employee's statutory right to collective bargaining and includes the right to representation during an investigatory meeting if the employee "reasonably" believes it will result in discipline. This right is not automatic — an employee must request representation. If there are multiple meetings, it is not necessary for the employee to renew the request each time.

NTEU leaders receive extensive training on helping employees with investigatory interviews. They typically help employees prepare ahead of time and are also there afterward to explain the process, answer

questions and provide advice. NTEU has negotiated provisions which extend our rights beyond those contained in the statute. For example, while the law does not require advance notice of an interview or the subject matter, many NTEU contracts do.

### Know Your Weingarten Rights

If you are questioned by your supervisor or any other agency representative about a matter that could result in discipline:

1. tell that individual you want NTEU representation;
2. the questioning must be stopped to allow you time to contact NTEU and have a representative present;
3. if the agency representative refuses your request and continues the meeting, contact your NTEU Chapter as soon as possible after the meeting.



## Can I Request a Reasonable Accommodation?



Federal agencies are required by law to provide reasonable accommodation to qualified employees with physical or mental impairments. Reasonable accommodations can be anything from screen reader software and book holders to ramps and telework.

NTEU contracts outline the process for submitting requests for reasonable accommodations, including confidentiality requirements and medical documentation, timeframes and procedures for employees to appeal denials. NTEU contracts also list the steps in the interactive process, outlined in regulation, and an NTEU steward can explain or discuss the interactive process with you.

Your NTEU representative can also help you submit a request and make sure you have the necessary medical documentation. If your request is denied, your NTEU representative can help you decide what to do next, whether it's submitting additional documentation or suggesting other options for accommodations. Your NTEU representative may recommend filing a grievance if there was not a valid reason for the denial or the agency refuses to explain why the request was denied.

In June, the Equal Employment Opportunity Commission issued new guidance on workplace accommodations, confidentiality of medical information, protections for older workers and pregnant employees in light of coronavirus. This information is available here: [www.eeoc.gov](http://www.eeoc.gov).



## Can I Protest?



Every American — including federal employees — has the right to protest peacefully. It's in the First Amendment and it's what tens of thousands of people have been doing nationwide over the past few weeks.

What should you know before heading to the streets?

You must be off duty and not in a uniform or wearing insignia that makes it appear that you are participating in an official government capacity. Also, you should not drive a government-owned vehicle to a protest.

Federal employees can also exercise their First Amendment right to informational picketing, thanks to NTEU. In 1976, NTEU won a court decision on the issue in a case involving IRS employees in Kentucky and New York. This right was subsequently protected by federal law.

## Can I Challenge a Performance Appraisal?



A 2016 survey by the Merit Systems Protection Board found that only 63 percent of federal employee respondents felt their appraisal was an accurate reflection of their performance. But do you have any recourse if you believe your performance appraisal is unfair or inaccurate? The answer is yes.

Most NTEU contracts spell out procedures for performance appraisals and include provisions to help make appraisals fair, transparent and objective. For example, your NTEU contract may have a provision that requires a manager to consider an employee's workload, training and availability of resources when drafting an appraisal. Your contract may also require that your supervisor set achievable goals and expectations — and clearly discuss those with you.

Generally, employees who disagree with a performance appraisal can take duty time to prepare written comments that become part of the appraisal record. An NTEU representative can help you draft this.

Your contract also establishes a grievance procedure that can be used to challenge performance appraisals. NTEU representatives have filed grievances in cases where they can clearly demonstrate that a rating was arbitrary, discriminatory, retaliatory or an abuse of discretion — or if a manager failed to follow negotiated procedures.

## Can I Engage in Workplace Fundraising?



Fundraising in the workplace is generally prohibited except for participating in the Combined Federal Campaign (CFC). This means Girl Scout cookie sales and other fundraising must be done outside of work, consistent with ethics rules barring the use of official titles, position or authorities to sell anything.

The Office of Personnel Management (OPM) oversees the CFC that enables federal employees to make pledges or donations through payroll deductions to support a range of charities. The CFC is usually conducted between September and December, but there was a special solicitation period this year in support of coronavirus charities.

In 2017, OPM made changes to campaign rules that, among other things, prohibit cash, check and money order donations. Funds could no longer be collected at local CFC events, bringing an end to beloved bake sales.

The prohibition on fundraising does not apply to the collection of gifts in-kind, such as food, clothing or toys. Solicitation of gift-in-kind donations is not considered fundraising and is permissible throughout the year.



## Visited Our Blog Lately?

If not, you may have missed out on updates on coronavirus and your workplace. Stay informed.

### A DAY'S WORK



Visit "A Day's Work" at [NTEU.org](http://NTEU.org)

## Can I Send a Letter to the Editor of a Media Outlet?

- ✓ Close federal workplaces during the pandemic.
- ✓ End the government shutdown.
- ✓ Properly fund federal agencies.

yes

These are some of the issues NTEU leaders have pressed for in letters to the editor of their local newspapers. But most NTEU leaders are frontline employees — are they allowed to submit op-eds and letters to the editor? The answer is yes.

Among other things, federal employees are allowed to express opinions and write letters to the editor and op-eds if they make clear that their views are personal and not official ones. When in public expressing an opinion — for example, during television interviews — federal employees should not wear an agency ID badge or uniform, or otherwise suggest that they are speaking in their official capacity, as that may give the appearance of an official endorsement.



## Can I Work a Second Paid Job?

it depends

day job at risk.

Federal employees may not engage in outside employment that conflicts with official duties and responsibilities. Most agencies require federal employees to get preapproval from a supervisor or agency ethics officer even if coworkers have similar outside jobs. The officer will vet the secondary employer for issues such as conflicts of interest or representing private interests before the government.

These restrictions apply even when employees are on unpaid leave, including furlough.

NTEU-negotiated contracts typically lay out the process for securing approval for outside employment. If you have questions, check with your local NTEU representative.

Federal employees can earn extra money through freelance writing assignments or speaking engagements when they are off duty, thanks to a landmark NTEU legal victory. In the 1995 class action lawsuit filed by NTEU, the Supreme Court concluded that a statute broadly prohibiting federal employees from accepting compensation, called "honoraria," for articles or speeches unrelated to their federal employment violated their constitutional free speech protections. Three years after NTEU's First Amendment victory, the honoraria ban for federal employees was lifted.

## Can I Donate to a Candidate's Political Campaign?

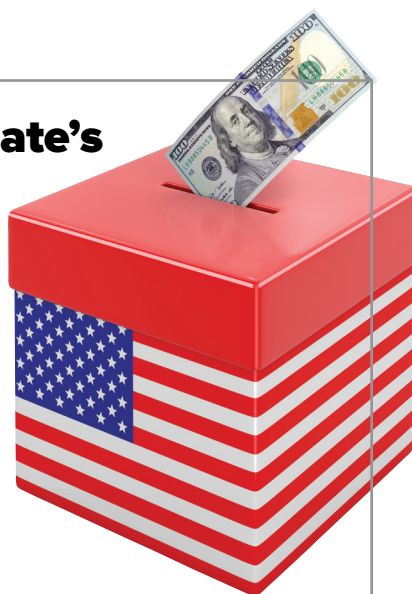
it depends

The election season is heating up and many federal employees have questions about taking part in political activity while complying with the Hatch Act. The good news is that there is plenty you can do.

For most federal employees who fall into the "less restricted" class under the Hatch Act, the list of permissible activities while not on duty is fairly long. Among other activities, employees may:

- ▶ contribute money to political campaigns, parties, or groups
- ▶ attend and be active at political rallies and meetings
- ▶ volunteer to work on a partisan political campaign
- ▶ express opinions about candidates and issues, including on social media

How do I know whether I am a "less restricted" employee? Check [www.osc.gov](http://www.osc.gov). For more information and guidance, visit [NTEU.org](http://NTEU.org).



## Can I Contact My Members of Congress?

yes

You can absolutely contact your members of Congress on legislative issues. In fact, NTEU members have sent more than 450,000 email messages to elected officials since 2016. Those emails have made a difference in our fight for fair pay increases, adequate agency funding and securing paid family leave.

Federal employees are permitted to engage in legislative activity directed toward the activities of the government, rather than an election. Voicing your opinion on a legislative issue — while identifying yourself as a federal employee — is not a political activity, which is not allowed in the workplace. However, you should send your letters and make your calls using a personal, non government email address while off-duty.

Ready to make your voice heard? Visit [action.nteu.org](http://action.nteu.org).