

## Reference Guide: Campaign Activities and the Law

Note that this document is intended as a reference guide and does not constitute legal advice or address all applicable authority and guidance on the subject matter. You should consult the relevant laws, rules and standards of conduct—or engage legal counsel and/or compliance personnel—should you have any questions about any specific situation.

### **Am I, an employee of the hospital, permitted to work on a campaign and/or make campaign contributions?**

Generally, you may volunteer for a campaign so long as you are working on the campaign on your own personal time and not on the hospital's time, using the hospital's resources, or at the hospital's direction. In addition, you generally may make personal campaign contributions, but you should be mindful of the laws that govern campaign contributions and aware of the fact the hospital cannot reimburse you for personal campaign contributions. Remember that an employee should not rely on or ask for assistance from other colleagues in connection with the employee's volunteer work.

### **If I, an employee of the hospital, want to endorse a candidate, can I include my title and/or hospital affiliation for identification purposes?**

Generally, you should avoid using your title and/or hospital affiliation in connection with your endorsement of a political candidate. If your endorsement is unrelated to raising campaign money—i.e., not in connection with a fundraiser or other solicitation for campaign contributions—it may be permissible for you to use your title and/or hospital affiliation if it is made clear that the hospital's name is being used for identification purposes only and if language approved by the Internal Revenue Service (IRS) is used to explain that titles and affiliations are for identification purposes only.

Note, however, that the Federal Election Commission (FEC)—the agency that oversees campaign finance regulation in federal races—has ruled that it is not permissible to use an incorporated entity's name, even for identification purposes only, in connection with campaign fundraising activity. Ultimately, you should seek out legal counsel and compliance personnel before using your title and/or hospital affiliation.

### **If I, an employee of the hospital, am organizing a fundraising or volunteer effort for a candidate, can I send emails or make phone calls about the event from the office?**

Generally, you should avoid sending emails and making phone calls about an event from your office. If the candidate is running in a federal election, the FEC does not prohibit you from sending emails and making calls (local only) from your office for this purpose so long as the activity is truly voluntary, personal in nature, and limited to incidental use of corporate facilities. Incidental use generally is considered to be one hour a week or four hours a month; however, as a condition of the hospital's tax status with the IRS the hospital may not participate or intervene in elections, and the IRS has not explicitly adopted the same allowances that the FEC makes for this kind of activity.

**If I, an employee of the hospital, used to work for an elected official but now work for the hospital, am I allowed to volunteer on the elected official's next campaign, and can I offer them strategy advice?**

Generally, yes. You would have to do all of your campaign work on your own time and not on time you would normally owe to the hospital. Additionally, you may not use the hospital's resources, including, for example, hospital staff. You should be clear with a candidate that you are volunteering on the candidate's campaign in your own personal capacity, not as a representative of your employing hospital.

**Am I, an employee of the hospital, permitted to submit an article to be included in a hospital publication highlighting a particular candidate running for office?**

No. Hospital resources generally may not be used to support a candidate for office. Under certain limited circumstances, the hospital may be permitted to publish an article about the official congressional work of a member of Congress who is running for re-election, but the piece may not, among other things, refer to his or her status as a candidate or mention an upcoming election. You should confer with legal counsel and compliance personnel before submitting an article that involves a particular candidate running for office.

**Can I, as a government relations professional for the hospital, attend a political fundraiser if the tickets were purchased by someone else besides me?**

It depends on the circumstances. An individual donor should not make a political contribution with the expectation or intent that you, as a member of hospital staff, will deliver it or will attend the event in the donor's place as a representative of the hospital. Particularly if done systematically, this use of your time would be viewed as an impermissible use of hospital resources for fundraising purposes. If, however, there is an isolated occasion where, for example, a friend of yours makes a contribution to a candidate and cannot go to an event, it generally should be fine for you to go in your friend's place. Note that, in this case, you would be attending in your personal capacity, not as a representative of the hospital.

**Is the hospital, as a non-for-profit entity, permitted to host voter registration drives and candidate forums? Am I permitted to attend these events during my paid workday?**

Generally, hospitals may carry out voter registration drives and candidate forums to help educate their employees about the candidates and issues relevant in upcoming elections. Both the IRS and the FEC have published detailed guidance on how to plan and execute these kinds of events. If your hospital's event complies with the requirements of the IRS and the FEC and if your hospital's policies permit it, you should be allowed to attend the event during your workday.

**If the hospital hosts a candidate forum, is there a rule regarding which or how many of the candidates should be invited?**

Generally, all legally qualified candidates for the relevant office from the district or state must be invited to a candidate forum. Third-party or independent candidates who are not viable or significant may be excluded under certain circumstances. However, these lines can be difficult to draw, so it is best to seek the advice of legal counsel and compliance personnel to help with planning and executing a candidate forum.

**Are there rules on the kind of questions the hospital can ask of candidates during a hospital forum or on a candidate questionnaire?**

Among other things, the questions should address a broad range of issues that the candidates would address if elected to the office they are seeking. Generally, the questions should be prepared and presented by a non-partisan, independent panel of individuals who are knowledgeable about the issues, and the questions should be unbiased, neutral and should not be asked in a way that suggests a "correct" answer or an answer the hospital wants to hear.

The IRS will consider a number of factors in determining whether a forum or candidate questionnaire is permissible, so it is best to seek the advice of legal counsel and compliance personnel before moving forward with any such effort.

**The hospital is thinking about surveying political candidates and publishing their responses in a hospital publication, is this allowable?**

Generally, yes, but it must be done according to guidelines established by the IRS and the FEC. Among other things, the hospital must include all candidates for the relevant office and must ask only neutral, unbiased questions. In addition, the hospital may not rate candidates based on their answers or qualifications for office. If the hospital is going to publish the candidates' answers, it should publish them in unedited form. There are a number of other guidelines that the hospital must follow, so it is best to seek the advice of legal counsel and compliance personnel to assist in developing any survey.

**If a candidate calls me, an employee of the hospital, or any member of the hospital staff and requests a tour or a visit to the hospital, is this allowed? If they are permitted to visit the hospital, can they distribute campaign literature while on the hospital premises?**

The answer to the first question depends on the facts and circumstances, including the reason for a candidate's tour. Generally, the hospital is allowed to have members of Congress and their staff tour its facilities for official or representational reasons. The hospital may not, however, permit a tour related to a campaign or designed to generate campaign photo opportunities or solicit campaign support or contributions.

To the extent a candidate is permitted to tour the hospital, a candidate and/or the candidate's staff may not distribute campaign literature while on hospital premises or leave materials for distribution upon their departure. It is a good idea to set ground rules up front, before a tour is scheduled, to avoid any confusion.

**If the hospital allows an elected official, who is currently running for re-election, to come and address an audience at the hospital, speaking in their official capacity and making no reference to the election, does the hospital need to invite the opposing candidate(s) to address the same audience as well?**

Generally, no, but for this to be permissible, an event must be non-partisan and clearly unrelated to an elected official's re-election. If the hospital chooses an elected official to address an audience at the hospital, the hospital must have selected the elected official solely for reasons unrelated to the elected official's candidacy. In addition, the hospital may not permit any mention or discussion of an election or the candidacy at the event.

**The hospital would like to give Senator X, who happens to be running for re-election, an award for his dedication to our institution/children's issues, is this permissible?**

Generally, yes, as long as the award is not cash and as long as it is a genuine, bona fide award for the senator's service. Among other things, an award should be something that the hospital gives out on a regular basis—for example, annually—according to written, well-established criteria. Whatever memento is given to the senator to commemorate the award must be permissible under the gift rules as well.

Note that, if the hospital is registered as a federal lobbying organization under the Lobbying Disclosure Act (LDA), any expenditures for events at which the hospital gives a member of Congress or staff an award may need to be disclosed on the hospital's semi-annual LD-203 report.

**Can the hospital conduct issue briefings to inform candidates running for office of its position on issues and encourage the candidates to adopt such a position?**

Generally, yes, but the focus of the issue briefings must be on educating the candidates, rather than providing them with a chance to solicit support. The hospital must provide all candidates for the office the same opportunity and

must comply with other guidelines to ensure that an issue briefing does not turn into an impermissible expenditure of hospital funds for election-related purposes.

Remember, too, that if a candidate is also an elected official, conducting an issue briefing could constitute direct lobbying by the hospital—which the hospital generally can do, subject to certain requirements and limits.

**The hospital hosts an annual event where we honor individuals who have championed children’s issues, the honorees often include elected officials, is this permissible? Is there anything we should know about these events?**

Generally, yes, hosting this kind of event is permissible if it is planned properly. Such an event must comply with the gift rules that apply to all of the elected officials who attend. If attendees are all federal elected officials, then the House and Senate rules generally will govern the event. If attendees include state elected officials, you should seek the advice of legal counsel and compliance personnel to ensure compliance with state laws.

If you are giving an award, you cannot give cash, and you need to make sure that it is a bona-fide award given according to written, well-established criteria. If you are giving a memento or other material item, it must be one that complies with applicable gift rules. If the hospital is registered under the LDA, it generally must disclose on its LD-203 form any expenses incurred to host or pay for events that honor members of Congress or their staff, or certain other federal officials. If the hospital hosts an event that honors both federal and state officials, you must also comply with applicable disclosure rules governing gift to or in honor of state officials.

**I’ve heard that the federal government has really cracked down on gifts given to members of Congress and/or their staff in the last couple of years. What impact does this have on hospitals?**

Yes, what you have heard is true. Congress passed legislation in 2007 that changed the congressional gift rules in a few significant ways. First, if the hospital employs—in-house—or retains—as an outside consultant—a federally-registered lobbyist, it may not give any “gift” at all to a member of Congress or their staff unless the gift falls within one of the exceptions enumerated in the rules. For this purpose, “gift” is broadly defined to include anything of value, including meals and tickets to events. Second, the obligation to comply with the gift rules now applies not only to a member of Congress or staff who receives gifts, but also to the entity that gives the gift. Finally, the hospital that is federally registered as a lobbying organization under the LDA must certify twice yearly to the government that it has complied with these gift rules.

For hospitals that do not employ or retain federal lobbyists, the gift limits for a member of Congress or staff generally is \$49.99 per occasion, subject to a \$99.99 aggregate annual limit. Items that qualify for one of the exceptions, or that have a value of under \$10, do not have to be counted for purposes of the aggregate limit. If you are planning an event to which members of Congress or their staff will be invited, finding an exception to the gift rule that could apply to the event often will be the key. Note that, while they are similar in a number of cases, the House and Senate have different rules, so it will be necessary to review both sets of rules.

**The hospital is holding its annual fundraising gala and it usually invites elected officials without asking them to purchase a ticket, can we still do this?**

Probably. Even as amended, the gift rules still allow members of Congress and their staff to accept free attendance at fundraising events sponsored by, and raising money for, charitable organizations, when the sponsor issues the invitation. The House and Senate require these events to be planned in a certain way, so it is best to seek the advice of legal counsel and compliance personnel in advance to ensure any event will be compliant.

**If the hospital employs lobbyists, but I have a pre-existing personal relationship with a member of Congress or their staff, is it alright for me to give them gifts or pick up the dinner bill?**

Yes, if the gift or meal are given under conditions that meet the “personal friendship” exception in the gift rules and if the cost does not exceed \$250.

The House and Senate Ethics Committees will look at a number of different criteria to determine compliance with the “personal friendship” exception, including:

- The history of your relationship with the recipient, including whether you knew each other before the recipient began working in Congress.
- Whether there is a history of reciprocal gift exchange between you—that is, whether the recipient buys you gifts or meals, too.
- Whether you are giving the same gift/meal to other members of Congress or staff.

Note that, if you are giving a gift or buying a meal on the basis of personal friendship, you may not submit the costs for reimbursement from your employer or seek a tax deduction for it.

**If the hospital is hosting a public event, like a groundbreaking, and we are distributing small gifts to all attendees, can we give these gifts to elected officials and/or their staff?**

If the hospital does not employ or retain federal lobbyists, it could, subject to the dollar-value limits—\$49.99 per occasion and \$99.99 annual limit, with an item under \$10 be permissible in any event.

If the hospital does have federal lobbyists, the gift would have to fall under one of the exceptions in the gift rule to be permissible. There is an exception for commemorative items, like trophies and plaques, but they have to be intended “solely” for presentation, which precludes anything of real practical use.

One quirk of the gift rules is that baseball caps and t-shirts are permissible.