

Guidance on Protesting

Foremost, all U.S. citizen direct hire employees have a right to freedom of expression, including participation in peaceful protests on social issues. The Department has received questions on the applicability of the Hatch Act, whether there are any diplomatic law issues, and how COM security restrictions may impact participation in Black Lives Matter events or rallies.

The Hatch Act and the Department's political activities guidance, including the provisions at 3 FAM 4123.3, do not restrict Department employees from attending a rally on social issues such as Black Lives Matter. The Hatch Act defines political activity as that activity directed towards the success or failure of a political party, candidate for partisan political office, or partisan political group and is applicable only to US elections. Even though policy issues may also factor into an individual's electoral decisions and attendance at an issues-oriented event may reflect an individual's political leanings, an issues rally that is not organized by a candidate, campaign, party, or partisan group and that is not directly linked to supporting a candidate or party in an upcoming election does not fall within the political activities restrictions. Of course, any Department employee who engages in political activity at an issues rally (for example by passing out literature or wearing clothing from a current US partisan campaign) must do so within the applicable restrictions on political activities. More information on the Hatch Act and the Department's political activities guidance is available at:

<https://usdos.sharepoint.com/sites/L-EFD/Pages/PoliticalActivities.aspx>.

From a diplomatic law perspective, all employees have a duty to respect local law, and accredited employees and their family members are prohibited from interfering in the internal affairs of the host country. Posts should consider whether there are any laws or policies of the host country that might be implicated (such as a curfew). In general, L has advised that participation in events that are not partisan in nature (e.g., not sponsored by a political party or taking sides in an election) would not constitute interference in internal affairs. This could include commemorative marches, protests, or events (such as a Holocaust remembrance or gay pride event), even if they are perceived as critical of host country policies, as such criticism would be consistent with freedom of expression principles in any democracy. Nor would such nonpartisan activities be prohibited under 3 FAM 4123.3.

While acting within the guidelines noted above, all U.S. citizen employees are entitled to their freedom of expression rights under the First Amendment for personal capacity activities. However, whether employees participate in physical demonstrations (rallies, marches, etc.) or in written and other electronic activities (social media posts, publications, etc.), employees are subject to the provisions of 3 FAM 4170 on official capacity public communications and personal capacity public communications, including via social media, on matters of Department concern. Given the representational nature of employees serving abroad, all employees must be mindful of whether their conduct and statements could be attributed to the U.S. Government as U.S. Government views may only be disseminated

through official channels. If post has concerns about particular statements made by employees, post should discuss further with L.

Note that under 3 FAM 4123.3, LE Staff, including U.S citizen LE Staff, are not restricted from exercising political rights or engaging in political activity in their home country (i.e., not relating to U.S. elections). Also, exercising political rights or engaging in political activity does not require COM approval. LE Staff must ensure that any political activity is done on their own time and with their own resources; that they do not state or leave the impression that their political advocacy represents the view of the U.S. government; and that they continue to comply with all applicable standards of conduct as set forth in Department policy, the LE Staff Handbook, and Embassy policies. If post believes that LE Staff's participation in certain political activity will interfere with the work of the Mission, post should discuss further with L.

Finally, COMs have the authority to issue directives to employees and establish security policies, including to place restrictions of movement to unsafe areas in a country. Nevertheless, COM authority and security responsibility can only be exercised consistent with other applicable law, e.g., cannot be used in any way that would violate the First Amendment. Moreover, these authorities can only be exercised in furtherance of a responsibility of the COM and security policies can only be put in place to address legitimate security concerns.

Before instituting any policies concerning employee participation in social issues, post management should consult with L.