

REFERENCE GUIDE

Political Activity Rights of Nova Scotia Government Employees

Issued by the Public Service Commission

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Are you interested in participating in the political process but unsure about what you should and should not do during an election campaign? There have been key changes in the legal framework that sets out the legal rights and restrictions for Nova Scotia government employees. This reference guide is intended to inform you of those changes and of your political activity rights as a result.

In March 2009, Executive Council approved regulations that created a new category of politically restricted employee, the “politically limited employee” and approved the exclusion of these employees from certain sections of the *Civil Service Act* related to political activities. This has resulted in the new category of employees who have the same political activity rights as employees who are not politically restricted with the exception of rules around seeking or becoming a candidate and leaves of absence related to candidacy.

This reference guide describes the legal rights and restrictions that are now in place under the *Civil Service Act*, the *Politically Limited Employee Position Exclusion Regulations* and *Civil Service Collective Bargaining Act*.

If you have any questions related to this guide or to your political activity rights, please contact your Human Resources Director.

What is Political Activity?

Political activities include:

- being a candidate in a federal or provincial election;
- engaging in partisan work for a candidate or party during an election; or
- contributing money or dealing with money for a candidate or a party.

Constitutional Right to Participate

Government employees, like all Canadians, have a constitutional right to participate in political affairs. Any restrictions on political activity are designed to protect the impartiality of the public service. Public trust in government requires impartiality of the civil service; civil servants must be, and be seen to be, impartial in order to maintain the trust of the public and the trust of the elected officials who rely on them for objective policy advice and effective policy implementation.

Through creating a new category of “politically limited employee”, the Government of Nova Scotia has recognized that the previous restrictions need not necessarily apply to the majority of employees in managerial and confidential positions. Under the new regulations, politically

limited employees have the same political activity rights as unrestricted employees except with regards to seeking nomination, running as a candidate and leaves of absences during the election period.

Who is covered?

All deputy heads and all persons appointed in accordance with the *Civil Service Act* are covered.

Employee Categories

For political rights and restrictions purposes, employees are categorized into:

- politically restricted employees which now includes a new sub-category, politically limited employees, and
- unrestricted employees.

Who is a “politically restricted employee”?

The overarching “politically restricted” category consists of deputy heads and all civil servants working in a “managerial or confidential capacity”. Government employees who work in a “managerial or confidential capacity” include those who are primarily engaged in the administration of personnel policies or programs; deal formally on behalf of the Employer with the grievance process; are employed in the Public Service Commission, Office of the Legislative Council or Office of the Auditor General; or are members of the medical, dental, or legal professions qualified to practice or employed in that capacity. Section 11(2) of the *Civil Service Collective Bargaining Act* provides a full list of criteria:

For the purpose of this Act, a person is employed in a managerial or confidential capacity who

(a) has or exercises managerial duties and responsibilities in relation to the formulation, development and administration of policies and programs;

(b) spends a significant portion of his time in the supervision of employees;

(c) is primarily engaged in the administration of personnel policies or personnel programs;

(d) is required by reason of his duties to deal formally on behalf of the employer with a grievance presented in accordance with the grievance process;

(e) is employed in a position confidential to the Lieutenant Governor, a minister, the deputy head, chairman or chief executive officer of a government board, department, commission or agency, or the Executive Council;

(f) is a person employed in the Public Service Commission, Treasury and Policy Board, the Office of the Legislative Counsel or the Office of the Auditor General;

(g) is a member of the medical, dental or legal professions qualified to practice and employed in that capacity;

(h) is employed as an officer under the Trade Union Act;

(I) is a person employed in a position confidential to any person described in clause (c), (d) or (e);

(j) is not otherwise described but who in the opinion of the Board should not be

included in a bargaining unit by reason of his duties and responsibilities to the employer.

Who is a “politically limited employee”?

Under the new *Politically Limited Employee Position Exclusion Regulations*, a politically limited employee includes all politically restricted employees **except**:

- a) a deputy head or chief executive officer of a government department, office, commission or agency or
- b) an employee in a position confidential to and reporting directly to the deputy head or CEO

Who is an “unrestricted employee”?

An unrestricted employee is any civil servant who is not included in the politically restricted category.

Political Activity Rights and Restrictions

Political Activity Restrictions that Apply to All Employees

All government employees are at all times governed by the Values, Ethics and Conduct, A Code for Nova Scotia Public Servants (effective May 15, 2009) the Conflict of Interest Policy (effective May 15, 2009), the *Members and Public Employees Disclosure Act*, and confidentiality obligations.

Even while on an unpaid leave of absence, civil servants must not place themselves in a conflict of interest situation by, for example:

- disclosing confidential information gained in the service of the Crown;
- using employment with the Crown to benefit personally; or
- using employment with the Crown to give preferential treatment.

Rights and Restrictions of Deputy Heads, CEO’s of Government Departments, Offices, Commissions or Agencies and Those in Positions Confidential to and Reporting Directly to Them

Members in this category **can**:

- vote in an election;
- be a member of a provincial or federal political party; and
- attend all-candidates meetings or debates.

However, members of this category must resign from their government positions to seek nominations, be a candidate, hold a provincial or federal elected office, or engage in other partisan political activity.

Rights and Restrictions of Politically Limited and Unrestricted Employees

Members of both of these categories can:

- vote in an election;

- be a member of a provincial or federal political party;
- attend all-candidates meetings and debates;
- hold office in a political party;
- contribute or deal with money to political parties and/or candidates;
- attend riding association meetings; and
- campaign for a candidate in a provincial or federal election.

However neither politically limited nor unrestricted employees , **except during a leave of absence to be a candidate**, are permitted to:

- solicit funds for or on behalf of a candidate or political party;
- publish or broadcast partisan statements supporting or opposing a candidate or political party;
- draft or speak in a partisan context on policies directly associated with the employee's work;
- campaign for a candidate during working hours; or
- wear, carry, or display in any way, at the employee's workplace or during the employee's working hours, anything that supports or opposes a candidate or political party.

Rights and Restrictions of Politically Limited and Unrestricted Employees When Seeking Candidacy

Politically Limited Employees

A politically limited employee may seek nomination as a candidate in a federal or provincial election before or during the election period or may be a candidate before the election period only if they request and are granted permission from the Public Service Commission to do so. To seek permission from the Public Service Commission, the employee must apply in writing to the Public Service Commissioner providing the information outlined in Schedule A *-Political Candidacy Request for Permission Checklist*.

The Commission may only grant that permission if it is satisfied that the employee's ability to perform his or her duties in a politically impartial manner will not be impaired or perceived to be impaired.

Permission may be on the condition that the employee take a leave of absence without pay for any or all of the period in which the employee seeks nomination or for any or all of the period in which the employee is a candidate.

A politically limited employee who has been granted permission to be a candidate must then apply for a leave of absence without pay from the Commission for the duration of the election period and the Commission must grant it.

Unrestricted Employees

An unrestricted employee may seek nomination or become a candidate in a federal or provincial election without permission of the Commission. If that employee becomes a candidate, they must take a leave of absence without pay on the date the election writ is issued if he/she is already a candidate or as soon as they become a candidate. The employee's deputy head must grant leave of absence without pay to the employee.

Reinstatement Rights Following Leaves of Absence

An employee on a leave of absence who is an unsuccessful candidate is entitled to return to the position that the employee left.

An employee on a leave of absence who is a successful candidate shall have their leave of absence extended for the time of the employee's first term of office or until the employee resigns from their elected position.

If an employee on a leave of absence is elected for a second time, their employment terminates on the day the employee is declared elected for the second time. If an employee is unsuccessful in a second election, the employee may return to the position the employee left or, where that position has been filled or eliminated, to an equivalent position when the leave of absence expires.

Pension and Benefits

During an employee's leave of absence without pay for political purposes, the employee may, upon application to their department prior to the leave of absence, be entitled to pension credit for service, medical and health benefits, long term disability coverage, and/or life insurance coverage, **if the employee pays both the employer's and the employee's share of the cost.**

Soliciting Funds from Civil Servants

No person in a position of authority or influence with respect to the employment of a civil servant is permitted to knowingly:

- solicit a contribution from the civil servant for a candidate or political party;
- coerce the civil servant to contribute funds to a candidate or political party; or
- coerce the civil servant to solicit funds for a candidate or political party.

Non Civil Servants

Persons working within the public service not appointed pursuant to the *Civil Service Act* are not governed by that Act, and the restrictions outlined above do not apply to them. Restrictions on political activity will arise from employment contract obligations and common law obligations.

Right Not to Participate in Political Activities

A government employee has the right not to engage in political activity.

Obligation Not to Use Workplace Resources

Employees are obliged to refrain from using government resources - including the GroupWise system - for partisan political commentary or like purposes.

Penalty for Contravention

An employee who violates the prohibitions regarding political activities is subject to disciplinary action up to and including dismissal.

SCHEDULE A

Political Candidacy Request for Permission Checklist

Employee Information

- Name
- Position Title
- Classification
- Department or Agency
- Location of Work
- Contact Information (should you need to be contacted regarding your request)

Election Information

- Nature of election
- Electoral district
- Title of elected office sought
- Is a period of leave of absence without pay **prior** to the election period requested?
(Please note that such a leave may be a condition of your permission)
- Date of nomination meeting, if scheduled
- Date by which the decision of the Public Service Commission is requested

Planned Activities in support of Candidacy

Please describe any activities you will participate in prior to nomination or as a candidate which would raise your visibility, which may impair or be perceived to impair your ability to perform your duties in a politically impartial manner.