

Can A Health Center Employee Take a Public Stance Against Racism?

This technical assistance document is intended to advise health centers regarding employees who inquire about permissible individual acts of “political activism”. This document was prepared by Feldesman Tucker Leifer Fidell LLP at NACHC’s request, June 2020.

Scenario:

A Health Center employee wants to take a public stance against racism in their local hometown but thinks that health center employees are not allowed to take a public stance because of the “strict requirements” on FQHCs regarding political engagement. The health center employee inquires if there is a rule or regulation that places limitations specifically on health center employees.

What can a health center employee do “as an individual on their own time” compared to what an employee can do “as a federally funded position during work hours” as it relates to taking a vocal stand on racism locally.

FTLF Response and Guidance:

As a matter of federal law (specifically, the Internal Revenue Code and cost principles for expending Federal grant funds), health center employees may not engage in political campaign activities “on company time”. Lobbying activities, including grass roots as well as direct lobbying activities, are permitted, provided (1) the time and other associated costs are not charged directly or indirectly to Section 330 or other federal grants, and (2) the health center’s aggregate lobbying activities are not “substantial”, as regulated by the IRS for 501c(3) corporations. If one can reasonably assert that the subject matter of the lobbying activity furthers project objectives, the employees’ time can be charged to Section 330-related program income.

Note that speaking out against racism generally would not constitute political campaign activity or even lobbying (unless the advocacy supports or opposes proposed legislation or the modification, extension or repeal of existing legislation).

A health center may wish to be more restrictive, e.g., due to local political or other concerns. That said, employees have First Amendment rights and may speak out against racism but may be instructed not to do so “on company time”, nor use the health center’s name or any health center resources.

As far as what constitutes “on company time”, that will depend on whether the employee has a defined work week (35 hours? 40 hours?), with a specific schedule (e.g. 8:30am to 5pm with a ½ hour break for lunch at noon) versus more flexibility. In any event, the employee can take unpaid leave for time spent on personal advocacy efforts, and the health center should maintain appropriate documentation of leave taken.

Summary:

As a general matter, speaking out against racism is not the sort of activity that constitutes political campaign activity or lobbying. However, circumstances must be considered. For example, if an employee said “vote for or against” a specific candidate, it would become political campaign activity. Similarly, taking a position on a public policy issue that is closely associated with a candidate could be viewed as supporting or opposing that candidate. In that regard, if a health center employee does engage in political campaign activity or lobbying on their own time, the employee MUST NOT suggest that they speak for the center, that the center supports their position, or be permitted to use the health center’s resources.