

FEC Re-addresses Employer-paid Benefits to Candidates

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On October 10, 2014, the Federal Election Commission (FEC) revisited the limits on candidates' receiving benefits from their employers during campaigns. The Commission has long held that paying unearned benefits to an employee-candidate can amount to a political contribution (prohibited if the employer is a corporate entity). But the agency has also carved out an exception for legitimate compensation that results from "a pre-existing policy . . . which is generally applicable to all employees."

Until now, the Commission's line between permissible and prohibited benefits was fairly well-established. Benefits paid under a fixed, generally applicable program would be permitted, but if the employer could exercise discretion in assigning benefits, they would likely be treated as contributions. In last month's companion advisory opinions 2014-14 and 2014-15, however, the Commission appears to have blurred the line slightly. These advisory opinion requests came from two rival Virginia candidates, both of whom were employees of Randolph-Macon College and both of whom had received "on materially identical terms, unpaid leaves of absence for the duration of [their] campaigns." During this time, and per the college's policy, both candidates would continue to receive fringe benefits they enjoyed as active employees.

While the college's leave-of-absence program involved a certain degree of discretion, the FEC nonetheless concluded that the program—and the resulting benefits—constituted legitimate compensation, not political contributions. "Although the College exercises its discretion when considering requests for leave, the facts . . . suggest that payments for continued benefits are issued *pro forma* once the request is granted," the Commission reasoned. Notwithstanding the discretion involved in approving leaves of absence, the Commission determined that the College was "according [the two candidate-employees] the same treatment it affords other employees who are granted leave for other reasons." "Under the circumstances here," the FEC summed up, "the College policy of liberally granting sabbaticals (including to both major party candidates in the same federal election) and generally approving continuation of benefits, including for those on sabbaticals for non-political purposes" amounted to permissible bona fide compensation. As a result, the college's payments of the benefits for the candidates on leave were not impermissible corporate contributions to the campaigns.