‘A Day Without a Woman’ Demonstrations Planned for March 8

By Philip B. Rosen, Howard M. Bloom, Linda R. Carlozzi and Thomas M. Lucas

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On the heels of the “Day Without Immigrants” protest, thousands of women may take the day off from work on March 8, 2017, to underscore the value of working women to the economy. The organizers of “A Day Without a Woman” cites national political issues as the key reason for this “general strike” action.

Created by the organizers of the January Women’s March on Washington, the latest event may involve women around the world skipping work, wearing red in solidarity, or not spending money for one day. The organizers say the campaign is designed to “recognize the enormous value that women of all backgrounds add to our socio-economic system — while receiving lower wages and experiencing greater inequities, vulnerability to discrimination, sexual harassment, and job insecurity.” Word of the event is being disseminated on the strike’s website, and by word-of-mouth, electronic flyers, and social media.

Some cities are anticipating substantial absenteeism on March 8. *The Huffington Post* reports that public schools in Alexandria, Virginia, Chapel Hill-Carrboro City, North Carolina, the New School in New York City, and at least one preschool in Brooklyn, New York, have cancelled classes because of anticipated staff shortages.

What can employers do if their employees engage in such (workplace) political advocacy?

Under the National Labor Relations Act, employees have the right to engage in group activity for the purposes of “mutual aid and protection,” such as two or more employees walking off the job together to protest working conditions or to enforce demands related to terms of employment, including by engaging in non-disruptive political advocacy on employees’ own time, in non-work areas. Such “protected concerted” activity by employees is protected by the NLRA, and the same is true of non-disruptive political advocacy by employees on their own time and in non-work areas, such as what happened in 2006 when Congress was considering an Immigration Reform Bill. Protests related to the bill led to the later filing of unfair labor practice charges with the National Labor Relations Board contesting the discipline of employees who participated in demonstrations and the NLRB General Counsel issuing guidance in 2008 on how that agency would handle such claims.

The NLRB General Counsel noted that employee political advocacy may be legally protected under Section 7 of the NLRA, but only if there is a “direct nexus” between employment-related concerns and the issues that are the subject of the political activity.

Regarding the planned actions on March 8, the organizers’ website generally lists employment-related concerns, such as “lower wages,” “vulnerability to discrimination,” “sexual harassment,” and “job insecurity,” as grievances to be underscored by the strike. Therefore, the legal characterization of any concerted action (*i.e.,* whether it is protected under the NLRA) is unclear. The NLRB’s position will be determined by an analysis of the “direct nexus” between employment-related concerns and the issues that are the subject of the political activity.

If the activity relates to an issue within the protesting/striking employees’ particular workplace, then it is protected by the NLRA (and cannot result in workplace discipline or discharge). On the other hand, if the employee activity is for a political cause and not deemed by the NLRB to be connected directly to employment-related concerns, the activity may not be protected. In that case, employees’ on-duty political advocacy — not working to engage in political activity — would be subject to the restrictions imposed by employers’ lawful work rules and discipline policies.

Key Takeaways

Meet the Authors

Philip B. Rosen

Principal
New York Metro
New York City 212-545-4001
Email

Howard M. Bloom

Principal
Boston 617-367-0025
Email

Linda R. Carlozzi

Principal
New York Metro
New York City 212-545-4040
Email

Employers who face work stoppages, or employee absences from work, on March 8 should make every effort to determine the reason for the absences, such as whether it relates to any “specifically identified employment concern in their workplace.”

Even if the absence from work is arguably not directly related to an employment concern in their workplace, employers should determine whether the absences violate any “lawful and neutrally applied work rules” before taking action against employees. At most, any discipline should be consistent with discipline imposed in similar past situations. An employer may want to discuss its analysis with legal counsel before going forward.

Employers may want to ensure that employees understand their work rules and attendance policies before any “political” actions are engaged in by employees.

Employers also may want to discuss with their legal counsel whether there are any other federal, state, or local laws that might affect this situation.

Finally, employers should consider the ramifications of a decision to discipline that, even if deemed legally permissible under the NLRA, may not be advisable, given the circumstances of its workplace. Employees who choose to participate in this protest, or others within the company, may view the issues as deeply personal.

Jackson Lewis attorneys are available to assist employers in their compliance efforts.

Thomas M. Lucas

Office Managing Principal
Norfolk 757-648-1424
Email