

Political Discussions in the Workplace

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As Election Day nears, employers across the country may be wondering how they can properly address political discussions in the workplace. This article provides employers simple and straightforward strategies for managing potentially tense workplace discussions.

What Laws Apply?

The first step to managing workplace discussions is to determine which laws may apply.

Many employees mistakenly assume they have an unlimited right to free speech under the First Amendment. However, the First Amendment merely protects government employees when they are speaking as private citizens. Non-governmental employees, and government employees speaking in their official job duties, do not maintain these rights. Therefore, private employers may generally regulate political expression as they would other forms of workplace communication.

Section 7 of the National Labor Relations Act (NLRA), which applies to both union and non-union employees, protects employees who are acting together for purposes of collective bargaining or other mutual aid or protection. With respect to political discussions, employers may not prohibit conversations relating to labor or working conditions, even if those conversations are couched in terms of politics or current events. This NLRA protection extends to time *outside of work* when employees attend rallies or protests concerning work-related issues.

Under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act, employers may not retaliate against employees who exercise political speech to report discrimination or harassment under these laws.

Finally, several states (including California, New York, and South Carolina) protect employees' lawful recreational activities outside work hours. This means, for example, employers in these states may not take adverse action against employees who participate in peaceful protests outside of work.

Strategies for Maintaining a Professional and Respectful Workplace

It is impossible to guarantee that employees will agree on their political beliefs. Instead, prudent employers can reaffirm the importance of respectful and professional workplace communications, rather than focusing on how to restrict employee speech.

Employers can follow these easy steps to reestablish principles of professionalism and respect:

1. *EEO and Anti-Harassment Policies.* Remind all employees of the company's equal employment, anti-discrimination, and anti-harassment policies. Make clear that any speech in violation of these policies will not be tolerated.
2. *Diversity and Inclusion.* Establish and reinforce a company culture that values diverse perspectives and inclusivity. Employees who understand and appreciate these concepts are more likely to respect views that differ from their own.
3. *Additional Workplace Training.* Consider offering additional employee training that reinforces the company's commitment to professionalism, respect, and inclusion. Employers that provide this training can create a safe environment in which the election may be discussed without bullying, harassment, and other negative behavior.
4. *Determine Political Expression Policies for the Organization.* Consider implementing a formal policy prohibiting employees from wearing political clothing or displaying political posters in their workspace. Employers must enforce this policy uniformly, regardless of an employee's role within the organization or political point of view. The policy should make clear it is not intended to prevent employees from discussing their working conditions or otherwise engaging in protected concerted activity.

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5. *Be Mindful of Local Laws.* Employers should always check with local counsel to determine whether any additional state or local laws may apply.

While it is unrealistic for employers to prohibit all political conversations from the workplace, these steps can help maintain a respectful and professional work environment.

Please contact a Jackson Lewis attorney with any questions.

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