

Talking Politics in the Workplace: What Can an Employer Do?

By Adam Gutbezahl on April 12, 2024



Hard to believe, but we are fast approaching the general election campaign and election in November 2024. Welcome to the silly season, folks! Our televisions, web browsers, and social media feeds are all about to be inundated with political advertisements. Since this topic will quickly take over our lives (whether we want it to or not), it is only natural that discussion of politics will find its way into the workplace. Political speech occurs in numerous ways. It could be talk around the office or conversations occurring via e-mail, Zoom, or Slack. It could be wearing clothing or other items such as buttons. It could be the placement of posters or bumper stickers in the office. It could even be liking or reposting something on social media.

Businesses often ask what, if anything, they can do about talking politics in the workplace. It may surprise you to know that your company can do more than you might think.

One common misconception is that employees have a First Amendment right to engage in political speech and conduct in the workplace. For private-sector employers, that is not the case. The First Amendment imposes limits on *governmental* actions affecting speech. It does not provide an employee the right to express whatever thoughts or opinions they wish in the workplace. If an employee of a private-sector company tells you he or she knows their constitutional rights and has a right to free speech in the workplace, that employee is mistaken.

A private-sector employer therefore may regulate its employees' speech and conduct in the workplace. These regulations and restrictions, however, cannot conflict with applicable federal and state law. At the federal level, the National Labor Relations Act (the "NLRA") affords employees the right to engage in "concerted activities," which are activities conducted in an attempt to improve wages, benefits, hours, or working conditions. It is a violation of the NLRA for an employer to "interfere with, restrain, or coerce employees" from engaging in these concerted activities. It is important to note that the protections afforded under the NLRA apply to non-union employers and employees who do not belong to a union. Political speech that does not relate to employment or concerted activities is not protected by the NLRA. For example, a sign hanging in an employee's office stating "Vote Blue" or "Vote Red" likely will not be protected by the NLRA; however, a sign stating "Raise Wages" may. For the NLRA to apply, there ultimately must be some connection between the employment conditions and the employee's speech or conduct.

Employers should also consider limitations imposed by state law. For example, in Massachusetts, an employer is prohibited from terminating, promoting, reducing, or raising an employee's wages because of the giving or withholding of a vote or political contribution. If a company's employees work in various locations across the country, then the business

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should ensure it understands the various state limitations on restricting political speech in the workplace.

Once federal and state laws are accounted for, employers should consider the following when developing a policy about politics in the workplace:

- Expressly state that the policy does not restrict speech or conduct related to wages, hours, or other legitimate employment interests;
- Note existing policies governing limitations on speech and conduct in the workplace, such as anti-discrimination and anti-harassment policies. Guising hate speech, misogynistic conduct, or racially offensive comments as political speech does not suddenly afford an employee with protection.
- Ensure the policy is enforced in a consistent and content-neutral manner, meaning that it is enforced in the same manner regardless of the political position taken by an employee or the substance of the speech or conduct.
- If adverse action is taken against an employee for violating the policy, provide written documentation explaining the adverse action and include the specific speech or conduct that was found to be violative.

Given the acrimony and hostility we saw in 2016 and 2020, it is certainly possible that 2024 will (unfortunately) bring more of the same. At Ruberto, Israel & Weiner, P.C., we are ready to assist you and your business in proactively approaching election season.

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