

Keep Out-of-Bounds Political Discussions from Haunting Your Workplace

Open political discourse at work can help employees bring their whole selves to work and feel empowered to share ideas—a key ingredient in helping companies innovate and thrive. That said, employers shouldn't let politics at work stray into incivility or the violation of co-workers' rights to be protected—whether by company policy or the law—from harassment.

Nurturing a culture that fosters collaboration and maintains a respectful work environment and that also, within reason and legal requirement, doesn't scare off customers, clients, and co-workers can be a tall order.

On the one hand, Jonathan Segal, an attorney with Duane Morris in Philadelphia and New York City, said that among workers, "banning political talk is not desirable as a cultural matter. Further, it is not enforceable as a practical matter."

On the other, being completely laissez-faire about political conversations may be asking for trouble, particularly in the thick of an election season.

One approach is creating a culture of consent, said Sam Schwartz-Fenwick, an attorney with Seyfarth in Chicago. For example, before an employee engages with another employee in a workplace discussion about a political candidate or party, the initiator might ensure that the other person consented to the discussion, he explained.

Even without such a culture, employers shouldn't tolerate hostile political discussions.

Employer Discretion Within NLRA's Limits

Despite common misconceptions among workers, employees of private-sector employers do not have a constitutional right to free speech at work, placing employers at the helm of defining permissible political discourse.

The U.S. Constitution's First Amendment protects speech from government interference, leaving private-sector employers with discretion to impose restrictions on political speech unrelated to the workplace.

However, employers that have unions and those that don't must comply with Section 7 of the National Labor Relations Act (NLRA), which protects certain political expression related to employment terms and conditions. Section 7 gives workers the right to engage in concerted activity to better their working conditions and shields certain communication linked to workplace issues.

Still, the NLRA does not give an employee carte blanche when it comes to such speech, said Tyler Hibler, an attorney with Husch Blackwell in Kansas City, Mo.

Political messages that include profanity or vulgar language may violate basic standards of professionalism, said Dawn Reddy Solowey, an attorney with Seyfarth in Boston.

And political messages that promote violence may be antithetical to a company's core values, she added. "The inquiry is very fact-specific. The employer should consult with counsel to navigate the legal risks," Solowey said.

"Employers most probably could restrict employees from talking politics with customers or potential customers," Segal said. "Similarly, employers most probably could restrict employees who interface with the public from wearing buttons or other political paraphernalia."

He emphasized, though, that "if the political expression is related to the terms and conditions of employment, it may be protected." For example, while a button endorsing Kamala Harris or Donald Trump for president may not be protected by the NLRA, a Harris button that backs paid leave or a Trump button that supports no taxes on overtime might well be.

"Messages related to societal issues—such as racism—may constitute concerted protected activity when employees are encountering similar issues in connection with their employment," Hibler said.

Employers should comply with state laws as well. Some states have laws that prohibit employers from disciplining employees for expressing their political affiliations. States with such laws include California, Colorado, Connecticut, and Illinois, said Shireen Meshkati, an attorney and HR consultant for Engage PEO, headquartered in Fort Lauderdale, Fla.

Despite such laws, employers may restrict an employee's discussion of political matters with clients or co-workers if the discussion disrupts productivity or job performance, according to Hibler and Delia Maria Berrigan, a fellow attorney with Husch Blackwell in Kansas City, Mo.

"With good policies in place, employers can mitigate many issues before they arise," Berrigan said, adding that employers should communicate these policies to employees and apply them consistently.

Employee Relations Concerns

"In many ways, the employee relations considerations pose a more significant risk for most employers than the legal risk of violating the NLRA," said Christopher Durham, an attorney with Duane Morris in Philadelphia.

Many employees feel strongly about their political views and consider them a part of their identity, he noted. These workers "may view an employer rule prohibiting political displays or communications as infringing on their rights," even if the employees aren't protected by the law.

Employers whose employees are not customer- or public-facing often refrain from imposing restrictions on political displays or communications, dealing instead with any problems that arise in the workplace relating to political displays individually, Durham said.

However, "employers should proactively develop a plan to minimize the risk of workplace conflict and disruption arising out of employees' political activities and communications at work," he recommended.

Responding to Disruptions

If there are disruptions in the workplace due to overheated political discussions, employers should respond and not pick a side, Segal said.

"However, employers must pick a side if an employee engages in racist, sexist, or other harassing speech scantily clad as political commentary," he said. "In such cases, employers must take prompt and proportionate corrective action."

Prohibited harassment would include not only harassing comments in the workplace but harassing social media posts that may be seen by employees, customers, or other business partners, Segal said.

Lead by Example

An additional issue is how HR professionals conduct themselves relative to politics in the workplace.

Segal had three recommendations:

1. **Show restraint in raising political issues.** It's "probably best ordinarily to avoid taking strong political stances other than with individuals with whom you have an independent friendship," he said.
2. **Demonstrate respect in sharing a political position.** "There is a big difference between sharing your preference and bashing the other side," Segal said. "If you bash your candidate's opponent, employees who support the opponent may feel like you are bashing them."
3. **Respond with civility when addressing political differences.** It is fine to acknowledge the differences, but avoid attacks, he emphasized.

"Differences in political preferences should be seen as healthy, even desirable, differences in perspectives," Segal said. "Political perspective is, at its core, a diversity issue too."