



## Employment Law Note

October 2020

### Politics in the Workplace



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With election day within weeks, people are expressing their political beliefs more than ever – buttons, t-shirts, hats, etc. When contentious political topics spill into the workplace, employers may be left wondering what actions they can take to prevent harm to morale and productivity.

Contrary to popular belief, employees in the private sector are not usually protected by the First Amendment. This means that employers, if they so choose, may restrict all forms of political expression in the workplace. Such restrictions might be in the form of a dress code prohibiting political apparel or a code of conduct explicitly prohibiting political debate during work hours. The same is not true, however, for government employees. Public employees are protected by the First Amendment, though only when their speech is of public concern and does not interfere with workplace duties or undermine public trust.

While private sector employers may have wide discretion to limit political expression in the workplace, several important exceptions apply. State and local law prohibit discrimination on the basis of an employee's political activity. Additionally, federal labor law protects certain employee political expression, even that which occurs during work hours.

#### State and Local Laws

In Washington, state law prohibits employers from discriminating against an employee for failing to

oppose or support a political candidate, ballot proposition, political party, or political committee. RCW 42.17A.495. Additionally, state law makes it a misdemeanor for any person to interfere with the right of a voter to sign or not to sign an initiative or referendum. RCW 29A.84.250. In short, employers must be careful not to take any adverse action against employees due to their engagement with the political process, even that which occurs while off duty.

For employers operating in Seattle, restrictions are slightly more onerous. A city ordinance prohibits employers from imposing "different treatment" upon employees on the basis of "political ideology." SMC ch. 14.04. This ordinance prevents employers from treating an employee differently based on membership in a political group or on the employee's political beliefs.

Employers should keep both the state statutes and the city ordinance in mind when enforcing otherwise neutral policies. Uneven enforcement of policies along political lines could lead to liability under these laws.

#### National Labor Relations Act

Section 7 of the National Labor Relations Act ("NLRA"), which can apply both to unionized and non-unionized employees, protects employees' right to engage in concerted activities to address the terms and conditions of their employment. While discussion of purely political topics is not protected, some political issues can have a nexus to specific employment-related concerns. For example, a discussion of political candidates or ballot measures

which relate to minimum wage or leave policies may constitute protected concerted activity. In such cases, any attempt by an employer to restrict such communication could give rise to an unfair labor practice.

Section 7 also protects political expression beyond verbal discussion. For example, employees have the right to display labor union insignia at work under the NLRA. Therefore, even if an employer maintains a neutral policy against political apparel, it may not discipline an employee for wearing a union button that contains a political message.

## Employer Takeaways

Employers must not treat employees differently based on their political views and must not infringe on political conduct that constitutes protected concerted activity. This can be easier said than done, especially as employers seek to enforce company policies in the midst of a highly contentious election season. The following are examples of common policies that can implicate employees' political expression:

- Social Media – Employers are generally permitted to maintain policies restricting certain uses of social media. That said, employers must tread carefully when disciplining employees for political posts on social media. Such discipline could run afoul of the state and local laws discussed above if based solely on the employee's support of a specific candidate or political issue. Additionally, employers must ensure that employee posts on social media are not protected concerted activity under the NLRA before imposing discipline.

However, political social media posts that violate the employer's harassment or conduct policies are not protected.

- Workplace Harassment – Political discussions in the workplace that turn to contentious subjects such as immigration or family planning may cause employees to take offense. Given the emotional nature of these topics, political speech of this kind could create a hostile work environment under state or federal discrimination laws. Should an employee complain that they are being discriminated against as a result of political discussions, employers must simply apply their discrimination and harassment policies exactly as they would for any other complaint.
- Non-Solicitation – Absent a non-solicitation policy, employees generally may solicit donations or signatures from coworkers in support of political causes. Employers that include non-solicitation policies in their handbooks must enforce them evenhandedly. For example, an employer may not allow an employee to circulate Democratic literature while prohibiting another employee from circulating Republican literature.

The above practices can help employers create a cooperative and civil workplace while still complying with employee speech legal protections. Finally, remember to investigate any employee complaints of harassment promptly and appropriately, similar to other investigations of reported misconduct. Please contact us if such a situation arises or if you need further guidance.

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