

Manufacturers' Manual to Political Speech in the Workplace

Article By:

Abby M. Warren

As we approach election season, conversations about politics are quickly picking up across the country and in the workplace. Employers may be wondering how they can manage communications in the workplace.

A common misconception among employers this time of year is that employees have a constitutional right to “talk politics” at work. Many employers think that the First Amendment of the U.S. Constitution prevents employers from standing in the way of their employees wearing political buttons or voicing their opinions at the water cooler; however, that is not the case. The First Amendment only guarantees citizens the protection of free speech from intrusions by the *government*. Thus, private sector employees do *not* have First Amendment protections at work, but they may have protections under various laws, including state laws governing speech and expression. It is essential to understand the laws that may be applicable and the parameters of those laws. Some states have “free speech” or “political activity” laws that impact what kinds of practices and policies employers can legally implement, laws prohibiting discrimination based on the political affiliation of employees, and laws regarding employee candidacy for elected office, among other laws. For example, California has several state

laws that provide legal protections for private employees engaging in political speech at work. As another example, under Connecticut law, public and private employees have free speech protections, and employers are prohibited from disciplining or discharging employees for exercising their free speech rights with certain limitations. Specifically, free speech is permissible, assuming that it does not interfere substantially or materially with the employee's job performance or relationship with the employer and addresses a matter of public concern, such as terms and conditions of employment and social justice, among other reasons. Therefore, even under Connecticut law, conversations or expressions that disrupt working time and operations may not be protected. Multi-state employers should, therefore, consider engaging counsel when crafting their political speech policies in order to ensure that they are legally compliant.

Employers should also carefully consider whether their political speech policies violate other laws, including the National Labor Relations Act (NLRA), which applies to unionized and union-free workplaces and protects an employee's right to engage in "protected activities" for the purpose of mutual aid and protection. Under the NLRA, employees have the right to engage in speech and expression related to working conditions, which could include discussing compensation and benefits, supporting a candidate based on the candidate's support of fair wages, and other issues. Notably, employers may also be considered to be in violation of the NLRA if, as opposed to restricting employees from engaging in political speech, they *require* employees to attend meetings to discuss political topics. Some states, including Connecticut and New York, have passed laws recently that ban employers from requiring employees to attend meetings in which political topics are discussed, including captive audience meetings—i.e., meetings where employers discuss the potential costs and limitations of

unions. In light of these state laws, employers should be mindful of their political speech, too.

Finally, employers with policies regulating political speech at work should be sure to apply those policies consistently to *all* workers. Employers should refrain from restricting speech that contrasts with their political beliefs while permitting speech they are aligned with. Doing so could open the door to discrimination lawsuits and other legal consequences.

For employers implementing policies that cover speech or communication in the workplace, consider consulting competent legal counsel for assistance.

This week's post was co-authored by Robinson+Cole Labor and Employment Group lawyer [Madison C. Picard](#).

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