

HR Insights

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Political Discussions in the Workplace

Expressing oneself is a right afforded to every American, no matter where that expression takes place, right? When it comes to the workplace, the answer is: It depends.

Employers have a responsibility to promote inclusiveness and encourage respect among employees. Unfortunately, political expression can have the opposite effect. In certain instances, such as when an employee's political expression disrupts or harms productivity in the workplace, private sector employers may choose to limit such expression.

Politics' Polarizing Effects

It doesn't take much for a political conversation to turn nasty—watch any presidential debate. Allowing such discourse without regulation can quickly lead to workplace distractions. The last things employers need are employee division and productivity disruptions.

To complicate matters further, political conversations can weave into other potentially litigious topics, like gender and reproductive rights. Conversations that wade too far into certain topics can lead to potential discrimination or harassment claims.

Beyond interpersonal and legal ramifications, allowing overt expressions of disruptive employee political expression can reflect how the public views an employer. For instance, if employees in customer-facing roles distribute political materials on the job, those customers might ascribe that political affiliation with the company itself. Unchecked, this

lack of image control can be especially damaging for employers.

Legal Considerations

As the saying goes: people have a right to free speech, not a right to employment. In other words, private sector employees typically are free to express their views, but that doesn't mean they are free from repercussions in all circumstances.

However, this doesn't mean employers can simply retaliate against employees for expressing themselves. There are a number of factors to consider with regard to employee expression, including:

- Whether the employer is private or public
- Applicability of federal, state and local laws
- Union status of the workplace
- Company policy

Public employers generally are subject to state and federal constitutional provisions, including the First Amendment, which protects political speech. However, there are instances in which speech is not protected, including when such speech interferes with employees' workplace duties or creates a workplace conflict, among others.



On the other hand, private employers do not face the same restrictions as the public sector. In most instances, as long as the workplace restrictions do not otherwise violate the law, private employers are free to dictate what is and what is not considered acceptable workplace behavior. States have different protections for certain speech, leading to a complex web of competing employment laws. For this reason, employers should seek legal counsel when dealing with political expression in the workplace.

Employer Considerations

Employers in the private sector should consider their own standards for what conversations are inappropriate in the workplace. For example, loud and disruptive conduct that targets another employee. In fact, certain viewpoints may actually violate other workplace guidelines, like equal opportunity and anti-harassment policies.

Employers can remind employees of their workplace standards in a number of ways, including offering ongoing harassment training or circulating notices about inappropriate topics. Further, employers are encouraged to establish and communicate clear expectations about their policies on political expression.

As in the case of acceptable speech standards, private employers can, in certain instances, determine when it's appropriate to discipline an employee when their political comments get out of hand. Employers should consider whether the employee was warned about their comments previously, who heard the comments, if the comments violate workplace policies and how the comments reflect on the employee themselves. Additionally, some states and local governments have laws protecting employees from adverse employment actions because of their political speech. The scope of the protections varies greatly among states' laws, so employers are encouraged to consult with local counsel prior to acting.

Lastly, employers must be careful to enforce their workplace standards uniformly. Disciplining one employee over another for similar comments could leave an employer open to a harassment or discrimination claim.

Conclusion

Private employers typically have authority over what conduct is acceptable in their workplaces. This includes political speech. Employees should be reminded regularly about their obligations under the company's policies, including anti-harassment and equal employment opportunity policies, and to always treat colleagues with respect and civility.

Speak with JP Griffin Group for more guidance on workplace policy.