

Employee Rights And Restrictions Regarding Political Activity In The Workplace

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As midterm elections approach and political events overseas and at home heat up, employees may have trouble avoiding heated and sometimes divisive political discussions with their coworkers. Because water cooler talk will almost inevitably turn to politics in the coming weeks, employees should be aware that their First Amendment right to freedom of speech generally does not extend to political speech in the workplace. Employees may be exposing themselves to the threat of discipline, or even termination, if their on-the-job political speech crosses the line, and as a general matter, employers have the discretion to determine where that line is drawn.

Practical Limits on Discussing Politics in the Office

When political speech in the workplace is disruptive or interferes with employee productivity, employers are free to restrict that political speech. Even federal employees are subject to the Hatch Act, a federal law that prohibits them from engaging in political activity while on duty, including displaying campaign materials, wearing campaign paraphernalia, or using social media or e-mail accounts to advocate for or against a partisan political group.

However, an employer's ability to place restrictions on its employees' political speech is governed by principles of uniformity and necessity (particularly as such speech also often touches on issues related to race, religion, gender, sexual orientation, and other protected characteristics). Employers must create uniform policies that are applied and enforced without regard to the political viewpoints expressed therein. For example, an employer may ban employees from displaying any campaign posters in the office, but may not enforce such a blanket prohibition unevenly or target only campaign posters that endorse a particular political party. Further, the restrictions on political speech may not be more extensive than necessary to serve the employer's interest in avoiding disruptions and maintaining productivity in the workplace.

New York Voting Leave Laws

Although employers have the right to restrict a broad swath of political activity in the workplace, employees are free to engage in political activity off the clock. In fact, most states have laws permitting employees to take approved leave from work in order to vote.

For example, in New York, under Section 3-110 of the Election Law, employees have the right to a sufficient period of time outside of work for voting purposes. If the polls are open for four consecutive hours either before the start of the employee's shift or after the end of his shift, the employee is deemed to have sufficient time to vote.

However, if an employee has fewer than four consecutive hours of voting time outside of his working hours, he may take off up to two hours of paid leave for voting at the beginning or end of his working

shift. The employee must notify his employer of his need for voting leave within two to ten working days prior to the election. The employer has the right to decide whether the employee will be taking voting leave at the beginning or end of the working shift.

At least ten days before election day, New York employers are required to post a conspicuous notice setting forth the voting leave rights of its employees, and the notice must remain posted until the polls close.

Keeping the Working Climate Respectful

With a subject as touchy as politics, disagreements can and will occur, but employees must be mindful of keeping tensions from escalating. Employees who wish to engage in political conversation at work should maintain an atmosphere of mutual respect and civility during their on-the-job political discussions. Remember that commitment to diversity includes respect for and sensitivity to the political viewpoints of others. Respect for others' viewpoints (and knowing when to refrain from or stop discussing sensitive subjects like politics) not only helps individual employees stay out of trouble, it helps foster a respectful working climate in which all employees can be productive and trust one another to act appropriately.

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