

CASE STUDY

How political speech can affect the workplace

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The great political divide – it’s in the news every day and discussions about it can’t help but seep into the office talk.

While public and government workers are protected by free-speech laws, there is no federal protection for political speech in private companies. On the other hand, there are state and federal laws that ban discrimination and protect workers who want to discuss wages or working conditions. It’s in this gray area where political speech meets discrimination and labor laws where employers can get tripped up.

“Since there may be overlap between political speech or beliefs and other protected categories such as race, national origin, age, religion, sex and gender, some political speech relating to these areas could be deemed harassing or hostile,” says Aisha Ferguson, director of EEO services at Insperity. “When political speech turns hostile or harassing, it becomes illegal and could lead to disciplinary action – including termination.”

In addition, the National Labor Relations Act (NLRA) grants employees the right to discuss terms and conditions of their employment. “If employees are discussing how a politician or political party may impact their work conditions and wages, employers may be prohibited from restricting or quelling these types of discussions,” Ferguson says.

OUTSIDE THE WORKPLACE

This can also include employees who participate in protests or rallies. Take, for example, an employee who is absent from work to attend a protest about equal pay because she believes women in her job are paid less than men. If you were to terminate the employee for being at that rally, it could be deemed unfair labor practices based on the NLRA.

Before making a judgment on an employee’s participation in political speech outside of the office, Ferguson recommends asking these questions:

- If the employee was absent from work to attend a protest or rally, would your company’s existing attendance policy prohibit the absence if it were not politically related? If the answer is “no,” you shouldn’t take adverse action against the employee.
- Does the employee’s participation in a protest or rally contradict the values, tenets and mission of the company? If the answer is “no,” you shouldn’t take adverse action.
- Has the employee’s participation in a protest or rally created a hostile environment within the workplace? If the answer is “no,” you shouldn’t take adverse action.

INSIDE THE WORKPLACE

Political speech that creates a discriminatory or hostile work environment, is offensive, or incites workplace disturbances, are all instances that may warrant an employee’s termination.

“In the office, your response to political speech should be the same as anything else that may be distracting or offensive in the workplace,” Ferguson says. How your company addresses these matters should be described in your company policies and should reflect its mission, vision and values. This can help keep your company in compliance with employment laws.

Beyond the legal issues, political speech in the workplace can also affect your company culture.

“This kind of speech can have a deeper effect on your business. From impacting productivity to taking a bite out of your company culture, political speech that falls into harassment or discrimination can hurt your bottom line, your recruiting efforts and your employee retention,” Ferguson says.

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