

From Division to Dialogue: Handling Political Discussions in the Office

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Politics and the Workplace

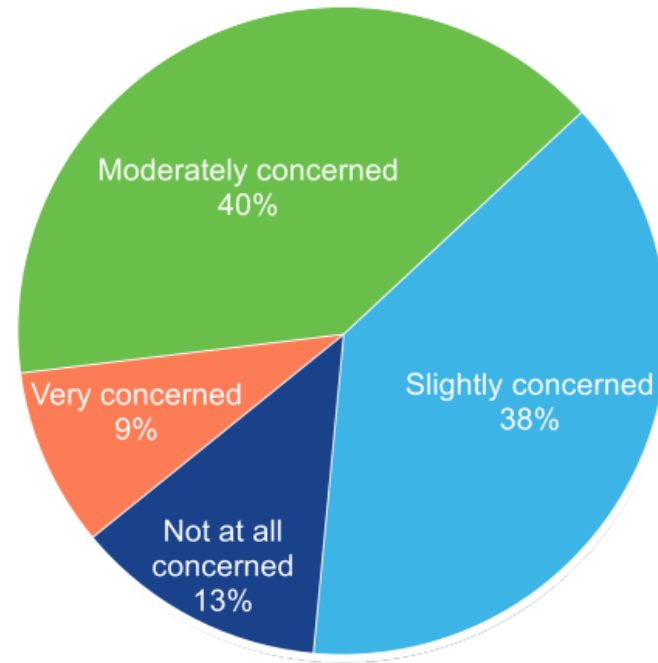
“[T]he etiquette rule banning casual social discussions of politics and religion [has been] roundly pooh-poohed and ignored. At best, it is thought to be a prissy and unnecessary restriction of adult conversation; at worst, it is considered a repression of free speech and the democratic process.”

- Judith Martin, a/k/a Miss Manners

By the Numbers

Littler Annual Survey Report - 2024

To what extent is your organization concerned with managing divisive political and social beliefs among employees leading up to the 2024 election?



By the Numbers

Findings from ResumeHelp's Politics in the Workplace Study

- More than half (51%) of workers say they never or rarely discuss politics at work.
- 45% have regretted having political discussions at work.
- 23% of people have decided not to apply to a company's job listing because of the company's political stance.
- 25% have left or wanted to leave their job because of their boss's political beliefs.
- 51% believe workplace political discussions hurt the work environment.
- 57% of women reported feeling a negative impact from talking politics at work compared to 44% of men.
- People younger than 45 are more likely and more comfortable talking about politics in the workplace.

By the Numbers

Results of Indeed-Harris Poll survey conducted in August 2024:

- 35% admit to openly discussing politics at work;
- 44% say that they've overheard their coworkers discussing politics while on the job; and
- 54% of respondents said that they're uncomfortable with any conversation involving politics coming up during work meetings

By the Numbers

Results of Indeed-Harris Poll survey conducted in August 2024:

- 39% of survey respondents reported there being some social pressure to conform to a certain political perspective at work;
- 39% reported circumstances involving workplace discrimination or harassment based on political beliefs; and
- 16% admitted to avoiding colleagues with different political beliefs

So Why Is This a Problem?

Hot
button
issues:

- Immigration
- Abortion
- Gender Rights
- Guns
- Religion

So Why Is This a Problem?



So Why Is This a Problem?



Politics and the Workplace

What can and should employers do to increase workplace civility (or at least decrease hostility) and ensure employees remain productive?



Considerations in Limiting Employee Speech

- Employment action in response to political discourse involving a trait protected by federal, state, or local anti-discrimination laws, such as race, sex, sexual orientation, disability, national origin, and/or religion, could be construed as illegal discrimination
- Argument: the political discourse is a proxy for the protected trait, which could bring the situation within the scope of anti-discrimination laws

Considerations in Limiting Employee Speech

- If employers ban or limit political discourse to eliminate distractions/division, will it negatively affect employee morale and workplace culture?
- Would it result in resentment from employees due to the strong personal connection to political issues individuals often feel?
- Would it potentially violate the law? (See discussion of Section 7 of the National Labor Relations Act below)

Effect of the First Amendment

First Amendment to the U.S. Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of speech**, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances

Effect of the First Amendment

- Generally, federal law does not protect employees' political speech or views from the actions of private employers
- The First Amendment only protects speech from governmental action
- While public employers need to be mindful of the First Amendment, it generally does not impact private employers and their relationships with their employees
- Although some states prohibit discrimination against private employees based on their political views, speech, and affiliation, Maine does not

Effect of the First Amendment

- Connecticut, however, does offer First Amendment protection to private employees - C.G.S. § 31-51q:

[A]ny employer, including the state and any instrumentality or political subdivision thereof, **who subjects or threatens to subject any employee to discipline or discharge on account of (1) the exercise by such employee of rights guaranteed by the first amendment to the United States Constitution** or section 3, 4 or 14 of article first of the Constitution of the state, provided such activity does not substantially or materially interfere with the employee's bona fide job performance or the working relationship between the employee and the employer, **shall be liable to such employee for damages caused by such discipline or discharge**, including punitive damages, and for reasonable attorney's fees as part of the costs of any such action for damages....

Potential Protections for Private Sector Employees – National Labor Relations Act

- National Labor Relations Act of 1935 (the Act) - federal law granting employees the right to form or join unions; **engage in protected, concerted activities to address or improve working conditions**; or refrain from engaging in these activities
- One of the National Labor Relations Board's (NLRB's) principal functions: preventing statutorily defined unfair labor practices on the part of employers and labor organizations

Potential Protections for Private Sector Employees – Section 7 Rights

- Section 7 of the Act guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and **to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection**"
- Section 8(a)(1) of the Act makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7" of the Act

Potential Protections for Private Sector Employees – Section 7 Rights

For employee activity to be a protected concerted activity:

- Must involve at least two employees, which can include a single employee raising a concern on behalf of other employees
- The activity must relate to employee working conditions or be the “logical outgrowth” of protected concerted activities

Potential Protections for Private Sector Employees – Section 7 Rights

- Some decisions from the Board indicate that Section 7 rights may be similar to protections that public employees have under the First Amendment as they relate to political or social justice activities

Potential Protections for Private Sector Employees – *American Federation for Children* decision

American Federation for Children, Inc. 372 NLRB No. 137 (Aug. 31, 2023)

- Protected concerted activity under Section 7 includes employee advocacy on behalf of those who do not meet the Act’s specific definition of “employee,” including those employed by a different employer

Potential Protections for Private Sector Employees – *American Federation for Children* decision

- Whether employee advocacy on behalf of others is activity for “mutual aid or protection” does *not* depend upon “whether the persons that employees seek to help are statutory employees,” or “whether they have any particular relationship with the employer”

Potential Protections for Private Sector Employees – *American Federation for Children* decision

Instead, the Board relied upon what it characterized as the “solidarity principle” to conclude:

The question is simply whether in helping those persons, employees potentially aid and protect themselves, whether by directly improving their own terms and conditions of employment or by creating the possibility of future reciprocal support from others in their efforts to better working conditions

Potential Protections for Private Sector Employees – *Home Depot* decision

Home Depot, USA, 373 NLRB 25 (Feb 21, 2024)

- NLRB rules that a customer-facing employee who wrote “BLM” (referencing the Black Lives Matter movement) on his apron engaged in protected concerted activity under the Act
- Board also concludes that Home Depot’s directive for him to comply with its dress code policy and remove the marking violated the Act, and the employee’s resulting decision to resign over the directive, amounted to a constructive discharge entitling him to backpay and reinstatement

Potential Protections for Private Sector Employees – *Home Depot* decision

The Board concluded that the employee's refusal to remove the BLM marking was "concerted" because it was a "logical outgrowth" of prior concerted employee protests about racial discrimination in the workplace and because it was an attempt to bring those group complaints to the attention of Home Depot managers

The employee's conduct was also "for mutual aid or protection" because the issue of racial discrimination involved employees' working conditions

Potential Protections for Private Sector Employees

Question/hypothetical:

Labor unions and paid family leave are issues that have been discussed by the presidential campaigns. If an employee expressed support for a candidate based on the candidate's views on these issues, would action taken by the employer in response potentially be a violation of the NLRA?

Recommendations to Employers

- Convey that (generally) it's not what you say, it's how you say it
- Acknowledge differences, establish boundaries, and foster a culture of respect

Recommendations to Employers

- Rather than banning a topic, clearly communicate expectations to employees regarding workplace conduct generally
- Remind employees about professionalism, respect for one's colleagues, inclusivity, and anti-harassment policy requirements
- Consider discouraging supervisors from having political discussions with subordinates to reduce the risk of discrimination and NLRA-related claims.

Recommendations to Employers

- Ultimately, before engaging in political speech or taking action based on the political speech, views or related actions on of an employee, call your lawyer first.

QUESTIONS?