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POLITICS IN THE WORKPLACE: PRODUCTIVITY OR POLARIZATION?

August 27, 2020

In what appears to be our never-ending political season, employers should prepare for employee discussions during worktime related to political matters. It really is hard to get away from it as virtually every news item features something that connects to the election. How can an employer maintain productivity and peace at work while otherwise permitting employees to engage in political discussions? First of all, we must sweep aside the common misconception that there is a right to free speech of all manner, at all times, in all location. Specific to employment issues, the First Amendment speaks only to restrictions by government, not private employers. Subject to state or local laws, private employers may generally take all sorts of employment actions to limit or in response to employee speech. These include the rights of private employers to limit political discourse on the clock and to discipline or terminate employees for extremist views expressed off the clock.¹

There are a number of practical workplace culture reasons for an employer to limit the scope of political discussions at work. In an interesting study by the American Psychological Association, there is a connection between political discussions at work

¹ Two asides: (1) Public sector employees have broader First Amendment rights in the workplace than their private sector brethren described here. (2) The term “extremist views” is meant to refer to virulent discrimination and harassment cloaked as a political opinion (ex: neo-Nazis who advocate the killing or extreme segregation of racial and religious minority claiming to be a political party). Taking or conditioning employment actions for mainstream political views or support of candidates would certainly create morale issues and would be more likely to run afoul of election statutes.

and employee hostility and anxiety. According to the study, 28% of younger workers feel stressed as an outcome of political discussions; 23% of all employees, regardless of age, feel isolated as an outcome of political discussions; 25% believe they have been the recipients of hostile behavior due to political discussions; and 27% described at least one negative outcome as a consequence of political discussions.

Of course, some employers don't want to commit to a wholesale ban of political discussion, but still want to keep it from interfering with production. Employers have the right to prohibit employees who are working or who are supposed to be working from interrupting the work of others. Employers can restrict political and other non-work discussion to occasions where all participants are not working, like during breaktime or before or after work. Discussions that can be curtailed include talk about politics, unions,² or anything else that would cause one employee to be disrupted at work.

Employers have the right to hold employees accountable to follow an employer's anti-harassment policies in the context of political discussions. An effective anti-harassment policy extends beyond protected classes to include unwanted, hostile behavior regardless of the underlying cause. Thus, once an employee makes it known to another that he or she does not want to be the recipient of political discussions, those discussions must stop.

A related issue and frequently connected to free speech is political emblems, stickers, caps or otherwise at work. Generally, an employer may prohibit those unless the cap or expression relates to a work-related issue. For example, if an employee had a cap or t-shirt that said "Fight for \$15," that likely is protected, concerted activity under the NLRA because it involves an issue regarding wages, hours or conditions of

² As long as the policy isn't targeted towards unions in language or enforcement.

employment. If, however, an employee had a cap that identified a particular candidate, the employer would have the right to prohibit it. Again, this concerns private sector employers, not the public sector.

Political discussions at work that relate to the National Labor Relations Act Section 7 rights – concerted activity regarding wages, hours and conditions of employment – is permitted, but the employer has the right to limit when and where. Again, during non-work time, provided those who are engaged in the discussion are not working. Even if the discussion is permitted, the employer has the right to hold employees accountable to engage in such discussions with a certain level of civility. Recent NLRB cases have expanded employer rights to hold employees accountable for vulgar, foul, threatening or otherwise hostile communications. Employers are encouraged to apply those same principles when communications involve political discussions.

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