

Better Call Sarah: Political Speech in the Workplace

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By Sarah Goodman



Dear Sarah,

Help! After this last election, it seems everyone at the office has something to say about politics, and I'm caught between my mission to keep the peace and the very real risk of stifling free speech. Is there a way I can manage these heated political discussions without turning our office into a debate club or accidentally infringing on anyone's rights?

Sincerely,

Politically Puzzled in HR

Dear Politically Puzzled in HR,

Political discussions at work intersect with various labor and employment laws, including anti-discrimination regulations, the National Labor Relations Act (NLRA), state laws on mandatory meetings^[1], and voting leave policies. Political conversations can also give rise to claims of discrimination, harassment, or retaliation under federal, state, and local anti-discrimination laws. By being mindful of both your right as an employer to set boundaries on political expression and employees' rights in this area, you can comply with the law and maintain a positive workplace culture.

Misconceptions About Free Speech in Private Workplaces

Many people assume that the First Amendment guarantees unlimited free speech rights in all workplaces, but it actually applies mainly to government regulation, not to private employers. This means that, generally, private companies have broad discretion to manage political speech at work. However, federal laws like the National Labor Relations Act (NLRA) and anti-discrimination statutes create important limits on this authority.

Protected Activities Under the National Labor Relations Act (NLRA)

The NLRA, for instance, protects employees—even in non-union settings—when they engage in “concerted activities” related to workplace conditions, such as discussions about pay or safety. If political discussions are directly related to these issues, they may also fall under protected activity. Employers should take care in addressing such conversations, especially as recent guidance from the National Labor Relations Board (NLRB) suggests that protected discussions may now include social justice or other political topics related to employee rights.

Risks of Political Speech Leading to Discrimination Claims

Even though political views themselves are generally not protected under anti-discrimination laws, discussions that touch on protected characteristics (e.g., race, gender, national origin) may lead to complaints of harassment or discrimination. For example, political debates on topics like immigration or reproductive rights could be seen as targeting certain groups, creating a hostile work environment. Employers should handle any related issues consistently and fairly to prevent claims of biased or discriminatory treatment.

State and Local Laws Offering Additional Protections

Additionally, some states have laws that prevent employers from disciplining or restricting employees based on their political affiliations, views, or party associations. In some cases, state protections extend beyond traditional political speech to cover social justice advocacy and other issues.

Employers must also be aware that state and local laws often provide greater protections for employees than federal laws. For example, some states offer protections similar to First Amendment rights for private employees. Employers should also be familiar with the differences between federal EEO laws and state-level EEO regulations to ensure compliance.

Developing Clear and Inclusive Policies

Employers should develop clear, effective policies that align with legitimate business interests while minimizing ambiguity around what political activities and expressions are allowed. The policy must consider activities and communications protected under the NLRA as well as relevant state and local laws. To reduce the risk of discrimination, harassment, or bullying claims, employers may want to discourage supervisors from engaging in political discussions with subordinates, as supervisors are not protected by the NLRA. However, these policies must also be carefully crafted to comply with state-specific laws. Additionally, employers should consider implementing a social media policy to set clear expectations for online behavior.

Political statements—especially on social media or in public spaces—can have a direct impact on your company’s reputation. Public backlash can arise if an employee, visibly linked to the organization, expresses controversial views. In today’s digital landscape, social media posts are just as influential as in-person comments, so it’s essential to handle online expression carefully. Many states protect employees’ privacy, meaning employers generally cannot demand access to personal social media accounts. If disciplinary action is needed, verify that any content was publicly accessible and relevant to workplace conduct to avoid legal risks. A policy on social media use, drafted in line with state and federal regulations, can help clarify expectations for how employees express their views online.

Managing Off-Duty Conduct

Employers should be mindful of employees’ rights to engage in political expression outside of work. In California, Colorado, New York, and North Dakota, laws protect employees from adverse actions based on lawful political activities conducted outside of work hours. Employers should exercise caution when considering disciplinary actions for off-duty conduct to avoid violating state-specific protections.

Fostering a Respectful and Inclusive Workplace Culture

Addressing political speech in the workplace requires a careful balance. A comprehensive, consistently applied policy that values respect and inclusivity can help maintain a positive work environment while respecting employees’ rights. By fostering a respectful culture, employers can reduce potential conflicts and support a productive, harmonious workplace. In the current polarized climate, taking proactive steps to handle political speech thoughtfully can strengthen workplace morale and protect the company from legal risks, ensuring a fair, respectful environment for all.

^[1]Mandatory employer-sponsored or so-called “captive audience” meetings are those an employer convenes during working hours to educate employees on certain topics, particularly the employer’s views on unionization. Although the NLRB has yet to issue a formal ruling on this issue, it is anticipated that the agency may take a strong stance against these types of meetings.

