

EMPLOYMENT LAW

'Don't Talk About Religion or Politics' May Apply to Workplace

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With midterm elections a week away, employers are asking us how to handle talk about politics at work. Too much valuable work time is being spent discussing politics, grandstanding for an employee's favorite political candidate and urging others to go to a political rally for a candidate.

But supervisors are uncomfortable interfering. They fear it may deprive workers of their rights to free speech.

What can and should an employer do? The short answer is that an old adage, "Don't talk about religion or politics," definitely applies during work hours — at least for politics.

The right to free speech at work only applies to government workers. In the private sector, employers have the absolute right to limit political discourse at work.

But how far can employers go? Employers may absolutely prohibit employees from endorsing candidates at work during working hours. And in our view employers should do so if it is disruptive or using up valuable work time.

On the other hand, while employees are off-duty, at break or lunchtime, some discussion of politics may be protected.

Depending on the situation, the advice would be different if workers are discussing legislation that could impact their work lives.

A statement by an employee to vote for a



particular candidate or state of candidates may be prohibited during work hours. However, a statement made by an employee during a lunch break that encourages co-workers to vote for a candidate because that worker supports legislation that would increase the minimum wage is protected under Section 7 of the National Labor Relations Act.

Although Congress enacted this legislation to address collective bargaining, unions, etc., it also applies to non-union workforces. Section 7 of the act provides employees with the right to engage in what the act describes as "concerned activities for the purpose of collective bargaining or other mutual aid or protection."

How federal labor law applies to political

activism in the workplace is described in a memorandum issued in 2008 by the National Labor Relations Board, the government agency responsible for administering and enforcing the act. It relies on court rulings and its own decisions to clarify where work-related unprotected political activity ends and protected political activity begins.

According to the NLRB memorandum, although employers have the right to restrict employees from engaging in political campaigning at work, certain "political speech" is entitled to protection under Section 7 of the act, and may be an exception to this general rule. Certain political expression during work — unionized or not — is protected if there is "a direct nexus between the specific issue that is the subject of the political advocacy and specifically identified employment concern of the participating employees."

What does this mean? When an employee engages in political expression such as making appeals to federal or state legislatures or agencies or to his co-workers on subjects concerning wages, health care benefits, hours of work, job safety or other terms and conditions of employment, that opinion will be protected if it occurs in a non-work area during non-working hours. However, when the political expression does not involve the terms and conditions of employment, it is clearly not protected and can be prohibited if it occurs at work.

What if employers don't mind if employees engage in "political expression" at work?



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Federal law includes limitations even under these circumstances. Thus, for example, if an employer allows an employee to use the employer's equipment for unpaid election activity, it must provide equal access to others who support different candidates or want to organize workers into a union.

Bottom line: Our recommendation is to prohibit political campaigning at work during work time. Let the candidates and their supporters slug it out after work. •