

Politics in the workplace: More than just a headache for employers

(April 15, 2019) - Cozen O'Connor attorney Nandini Kavuri discusses ways that employers can defuse heated political discussions in the workplace without improperly restricting the ability of employees to express themselves.

Political discussions in the workplace have become increasingly common. What was once considered a taboo watercooler topic has become one of the most frequently discussed subjects in the office.

Although there are certainly some benefits associated with employees being outspoken and willing to discuss their personal beliefs at work, political discussions in the workplace can pose some serious challenges for employers.

Scope of the problem

According to a study conducted by the Pew Research Center, 62% of Americans say President Donald Trump's presidency and policies come up "very often" in conversation, and more Americans now say it is "stressful and frustrating" to discuss politics with people they disagree with than two years ago.¹

In fact, a majority of Americans (63%) say that when they talk about politics with people they disagree with, they usually find less common ground politically than they expected.²

In this divisive political climate, it should come as no surprise that engaging in a civil discussion about politics can be particularly tough. Political beliefs are often deeply held and personal, and emotions run high. For many, it can be difficult to hold back their passion on these political issues, even while at work.

What might start out as friendly banter can quickly escalate into a heated conversation. Further, these political discussions are not always confined to the workplace. Instead, employees often discuss politics outside of work and on social media.

These types of heated discussions can have far-reaching consequences for your workforce.

Along with potentially creating a toxic environment, political discussions at work can result in lower employee morale, productivity issues and even higher employee turnover.

Most employees do not want to work in a confrontational environment, and they certainly do not want to feel alienated because of their political views. Moreover, because these political discussions are rarely if ever work-related, they do not improve employee productivity. Instead, they are often disruptive and can be a source of conflict between employees.

When supervisors initiate political discussions, there can be additional challenges.

Many employees are less likely to let their employer know that they are uncomfortable with a political discussion when a supervisor is instigating the conversation. Additionally, depending on the tone and substance of the conversation, employees may feel targeted, harassed or bullied by their supervisor — particularly if they hold different political views.

Likewise, employees may perceive that a supervisor is exercising favoritism toward employees who support the supervisor's political beliefs and retaliating against employees who do not.

Additionally, political discussions often invariably involve contentious topics that are closely tied to protected categories under federal discrimination laws, including race, religion, national origin, sex and age. For example, a supervisor's specific comments or opinions regarding immigration, reproductive health, retirement or the Black Lives Matter movement may be viewed as evidence of harassment and/or discrimination.

Specifically, an employee may consider the supervisor's political statements as evidence of a discriminatory animus against a certain category of protected individuals. If that employee ever filed a discrimination lawsuit against the company, the employee could easily cite to the supervisor's political comments as evidence in support of the claims raised.

The legal landscape

Contrary to popular belief, the First Amendment right to freedom of speech does not extend to private employers. Instead, the First Amendment's protections apply only to governmental actions.

Accordingly, private employers are generally given broad authority to place limitations on political discussions during working hours. Likewise, private employers are generally not prohibited from placing limitations on the distribution of political material during work time.

That said, private sector employees are provided some protections relating to political speech under the National Labor Relations Act, [29 U.S.C.A. § 151](#). Specifically, the NLRA allows all employees (both nonunion and union) to discuss wages, benefits and other working conditions with one another. These discussions are referred to as "protected concerted activity."

An employer may not terminate, discipline or otherwise retaliate against an employee for engaging in protected concerted activity. Consequently, if employees are engaging in a political discussion relating to a particular candidate's stance on minimum wage or working conditions, this speech might be considered protected concerted activity under the NLRA.

In addition to the protections provided by the federal government through the NLRA, several states have also passed laws that prevent employers from discriminating against employees based on their political views or affiliations. For example, California employers may not prevent employees from engaging in or participating in politics.

Similarly, in New York, employers are prohibited from discriminating against employees based on their off-duty political conduct. Given the wide degree of variance in state laws on this subject, employers should become familiar with the relevant laws in the states where they operate.

When political discussions go too far

There is a fine line between healthy and civil discussions about politics at work and discussions that become a major source of conflict. If a political discussion escalates to the point where there is profanity, name-calling or violence, an employer should intervene.

Similarly, if an employer learns of a political discussion in the workplace that results in discriminatory comments regarding race, religion, national origin, sex, age, veteran status or any other protected category, it is imperative that employers not ignore these comments.

When monitoring these discussions, employers should consistently apply their policies, including any codes of conduct and discrimination and harassment policies, and discipline any employee who violates these standards accordingly. Uniform application of these policies is imperative. Policies must be uniformly applied regardless of whether the employer agrees or disagrees with the employee's political sentiments.

The role of social media

With the rise of social media, employers have had to deal with a whole new set of headaches involving the regulation of off-duty conduct.

Although political discussions on social media are very common and generally do not interfere with workplace operations, at times they may cross the line. For example, if an employee posts a message including a political sentiment along with a racist comment, an employer may discipline and/or terminate that employee for their off-duty conduct.

Likewise, if an employee is bullying another employee on social media regarding political views, this may be something an employer is forced to address at work.

Like political discussions during working hours, an employer may regulate an employee's speech on social media in a manner consistent with the requirements under the NLRA. However, before doing so, employers should closely review the state and local laws in which they operate and act in accordance with those laws and in a manner consistent with their company's policies.

Employer best practices

Managing political discussions in the workplace can certainly be a challenge. Employers wishing to limit these potentially problematic discussions should consider creating a formal policy to address these conversations.

While a total ban on all political conversations during working hours may be impractical and in fact prohibited by the NLRA, employers can craft a policy prohibiting political discussions that may be viewed as disruptive, disrespectful or otherwise against company policy. The policy should clearly state that it is not intended to limit an employee's rights under the NLRA.

Additionally, the policy should provide employees with an avenue to raise complaints regarding political discussions that may be interfering with their work. All complaints should be promptly investigated and taken seriously.

Even if a formal policy is not adopted, employers may consider advising supervisors to exercise discretion regarding their political opinions.

These discussions can not only be harmful to the work environment; they can also increase liability for the company. Specifically, supervisors should avoid making any political comments that could be viewed as disparaging to a particular

group's protected status, including race, religion, national origin or sex. Further, because supervisors may be closest to these issues, employers may consider training them to monitor political discussions and de-escalate conversations if they start to get out of hand.

Finally, employers should routinely re-educate their workforces on company policies regarding codes of conduct, bullying, harassment, anti-discrimination and social media use. Employers should explain that an employee's failure to adhere to these policies can result in disciplinary action, up to and including termination.

The key takeaway employers should provide to their workforces is that differing ideas and diversity are to be celebrated and that all employees must be treated with respect. While this may not eliminate all political discussions from the workplace, it may decrease disruptive political dialogue and allow employers to maintain control of the workplace.

Notes

1 Pew Research Ctr., *More Now Say It's 'Stressful' to Discuss Politics With People They Disagree With* (Nov. 5, 2018), <https://pewrsr.ch/2UkoHaH>.

2 *Id.*

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