



Election Day is Here – What you Need to Know about Politics in the Workplace



Tomorrow is Election Day! Please remember that Maryland employers must provide any employee registered to vote with up to two hours of *paid* leave to vote if that employee does not already have two continuous hours off during the time polls are open (*i.e.*, during the period 7 a.m. to 8 p.m.). The employee must provide proof that the paid time off was used to vote.

The results of the Presidential Election may be subject to recounts, legal challenges, and

general controversies extending weeks or months after Election Day. In these politically divided times, election related disputes can, unfortunately, find their way into the workplace via conflict among coworkers or with third-parties (customers, visitors, patients, contractors).

Many employers wonder how to address potentially negative workplace behaviors given employees' First Amendment rights ("Don't employees have a right to express their views?"). In general, the First Amendment's free speech rights do not apply to private employers, but only to government actors. Thus, any notion that an employee of a private organization can say whatever they wish – about politics or otherwise – in the workplace without job related consequences is simply incorrect.

There are a few states, like Connecticut and California, that have enhanced free speech protections for private employees. And employers in Washington, D.C. and several other jurisdictions may not discriminate or discipline on the basis of an employee's political affiliation. But employers can avoid running afoul of these laws by applying workplace civility and behavioral expectations neutrally, without respect to the political views expressed.

For most private employers operating in Maryland and elsewhere, the National Labor Relations Act (NLRA) provides the most important guardrails for restricting speech in the workplace. The NLRA provides enhanced protections for employees engaging in "concerted activity." Thus, to the extent that political expression also takes on the characteristic of collective action to improve working conditions or advocate for the rights of coworkers, it may receive this enhanced protection.

So, what general concepts should an employer keep in mind as it navigates a potentially fraught political environment?

- Apply workplace rules such as dress codes, restrictions on display of signage/logos, and focusing on work during worktime on a neutral basis, without respect to the underlying message expressed (with special consideration where the activity takes on the characteristics of protected concerted activity);
- Review associated policies for legal compliance before they have to be enforced against employees;
- Be measured in response to non-violent employee political activity in the workplace and avoid ultimatums (like, "Take that political pin off or else."); explain the reasons why it enhances relationships with customers or visitors to adopt uniform dress and avoid political discussions in the workplace; persuasion is typically preferable over punishment;
- With respect to violent, unlawful, or threatening political activity, however, apply anti-violence policies swiftly, strongly, and without respect to the employee's underlying motivation (it doesn't matter how strongly the employee feels about a political issue, violence in the workplace is never tolerated);
- Engage counsel before taking an adverse action that will result in an employee separation or suspension over political activity;
- Recognize employee behavior that appears likely to attract media/social media attention and consider engaging with crisis public relations/communications experts before taking adverse action;
- Express that the employer supports a wide diversity of viewpoints and that different perspectives make a workforce stronger, but these differences cannot become a distraction or point of conflict in the workplace; and
- Non-profit employers should take special care where employee activity may appear to constitute the entity's participation in a political campaign or support/opposition of a candidate for elective office, given the restrictions applicable to 501(c)(3)s.

**This client alert is for informational purposes and is not legal advice. View [previous issues](#) of Monday Minute.*

What's Next?

If you have questions about political activity in the workplace, please contact our employment attorneys:

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