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## **An employer's guide to real political activity at work**

by [Deborah Weinstein](#)

A businesswoman recently called my office in a panic — two of her employees had such strong and differing views about the presidential election that they were at loggerheads. Although they were longtime friends, each now felt so passionately about their own candidate that they would have knock-down-drag-out arguments at work, disrupting the entire office. Eventually one of them told the other: “I can’t be your friend any longer, not if you’re voting for ‘him’” and that was the end of it.

They stopped talking to each other — even in work situations. “I’ve had it,” the employer told me. “They won’t like it, but I’d like just to tell everyone in the office to stop talking about the election right now and get back to doing their jobs. But can I do it? Is it legal?” she asked.

With election day coming, the floodgates have opened and everyone, it seems, has questions about how to handle election politics at work. No wonder. Everywhere I go lately, people are talking politics. Election “chatter” has become a national pastime, and one that is inescapable.

When politics enters the workplace, most everyone finds themselves challenged. Employers are concerned about how talk of politics will affect productivity and professional relationships; however, many don’t know what the law allows them to do about it, if anything. On the other hand, many employees believe they have unlimited legal rights to talk politics at work and to engage in activities to support their candidates. Sometimes just keeping the peace can be difficult.

It is critical for employees and employers to know what the law allows and what it prohibits when it comes to election talk, supporting candidates and working for political parties at work. Employers need to know how to make decisions that do not run afoul of election, discrimination and even labor laws.

### **The answer**

With some important exceptions, when you’re at work, a private employer is allowed by law to restrict its employees’ election talk. Remember that the employer is paying for the

employee's time, all of it, and may require her or him to spend all of their on-duty time doing the job. The employer may decide how much, if any, of its employees' on-duty time may be used to discuss politics. On the other hand, no law requires a private employer to restrict employees' election-related discussions and may allow them to discuss the election.

### **No soliciting**

Private employers need to be careful if they allow political discussions and solicitations about the upcoming election but prohibit union politics or solicitations at work. Once the door is open for the upcoming presidential elections, it may not be closed for unions — even where the work force is not unionized.

The opposite is also true. A business that prohibits all political talk and solicitations, except with respect to charities, may also forbid union-related politics and solicitations.

For example, if an employer allows an employee to post an election flier, it would violate federal labor laws to remove a union flier posted on the board. Employers also may not restrict employees' on-duty discussions about their employment conditions including discussions also concerning federal elections.

### **Being harassed**

Employers should be careful that employees are not mistreated because of their politics. Some states have laws prohibiting employment discrimination based on political views. In addition, comments about presidential candidates' age, race, gender, national origin, religion and veteran's status may offend some employees or make them feel harassed.

### **Campaigning on the job**

Companies should avoid employees campaigning on the job. The law prohibits corporations from making campaign contributions and donations. Most campaign activities that an employee might engage in at work to support their personal political views may be in-kind contributions or donations. An employer may allow these activities if (1) the employee completes the normal amount of work for which he or she is paid, (2) the activity does not increase the employer's overhead or operating costs and (3) the activity has not been coerced. Where the employee's activities exceed "incidental use" of the employer's facilities, the employee must reimburse the employer for the normal rental fee.

An exception is Internet activity. The majority of Internet activity is free from campaign finance regulation. This includes, for instance, e-mailing, linking, blogging and hosting an Internet site. An individual does not make a contribution or incur expense when using equipment or services for uncompensated Internet activities for the purpose of influencing an election, regardless of who owns the equipment or where it is located.

A business may, but is not required to, allow employees to use the employer's computers for unpaid election activity but it must provide equal access regardless of which candidate or party is supported.

**Stay on the sidelines**

Given the complexity of the regulatory landscape and the risks involved, employers should endeavor to stay on the sidelines and let the candidates and the parties slug it out.

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