

Quickstart Guide: Managing Political Conversations and Supporting Employee Voting Rights

Given a particularly divisive political climate in the United States, many companies are grappling with whether and how to attempt to limit conversations about politics in the workplace. Some companies are also interested in channeling 2020 Election Day energy into supporting voter turnout efforts and providing nonpartisan voter education information and resources. This guide explains what employers and managers can do and what pitfalls they need to avoid.

Part I: Managing Workplace Political Conversations

A private employer generally has wide latitude to limit political expression in the workplace provided they do not run afoul of protected activity under Section 7 of the National Labor Relations Act (NLRA) or applicable state laws. However, it is nearly impossible to limit all political conversation in the workplace, and any attempt to do so may hurt morale or employee engagement. At the same time, without guidelines, political conversations can quickly become disruptive and devolve into activity that is not in line with company policies or behavioral expectations. Here are approaches to consider for dealing with political expression in the workplace; the right approach will ultimately depend on the employer's specific situation and culture.

Most Permissive: Allowing Political Discussion

Where a work environment has well-established norms around upholding an inclusive culture and respectful treatment of colleagues, an employer can often trust staff to be mindful of how they engage on hot button topics and address any related issues on an as-needed basis. However, given how divisive things are now, even if a company has laid the groundwork to ensure their culture is civil and respectful, it may prove useful to communicate some ground rules ahead of the election.

There is no way to guarantee that employees engage with civility, compassion, and measured language. An employer can, however, help set the stage by:

- Acknowledging that regardless of political party or beliefs, tensions are running high, and many team members may be feeling stress or fear related to the upcoming election.
- Reminding employees that the workplace is a place where everyone should feel safe, welcomed, respected, and included.
- Reminding managers that they should not assume that all employees share the same political beliefs.
- Communicating to employees that the company does not want to limit healthy dialogue about important social issues, but it also has a vested interest in reducing disruptions and maintaining a culture of respect.
- Redistributing company harassment, discrimination, and general conduct policies.
- Prohibiting comments about candidates (or anyone else) that are discriminatory or harassing based on the candidates' or their supporters' race, sex, national origin, religion, color, age, disability, or any other legally protected characteristic.

- Reminding employees that too much personal conversation of any kind can interfere with performance expectations. Even where an exchange is only a few minutes long, if it is divisive or disrespectful, it could result in a loss of productivity and damage to morale.
- Encouraging employees to be mindful of how and when they engage in conversation on political topics. Some people enjoy talking politics while others find it stressful and do not want to engage in political conversation at work.
- Encouraging employees to approach these conversations from a place of curiosity. Employees should attempt to understand the viewpoints of others, accepting that they may not find common ground. Conversation should be seen as an opportunity for better understanding, not a means to change someone's mind.
- Setting guidelines for managers related to the election and political conversations, such as the ones at the end of this guide.

Middle Ground: Prohibiting Certain Behaviors

Employers may want to limit but not eliminate the possibility of political discourse in the workplace. In this case, it may be enough to spell out specific activities that are off limits. For example:

- Distributing political materials in working areas or displaying campaign materials in employee workstations.
- Talking about political candidates in front of customers, vendors, or other workplace visitors.
- Discussing political candidates on company computers or internal communication channels (keep in mind that if employees are working from home, this will amount to a total ban).
- Prohibiting solicitation of money or support for political candidates or causes during work time.

Employers should avoid singling out topics to be avoided, such as "No discussing Black Lives Matter." It is likely to create employee morale issues and could even give rise to a discrimination claim. Even with a neutral policy, such as "No discussing religion," employers need to ensure they are consistent in enforcement. If an employer only disciplined employees who were arguing about Judaism but not employees talking about Sunday's Mass, it would be discriminatory. General policies of civility and respect are safer and more effective.

Employers taking the middle ground approach should also provide the guidelines presented above for the *most permissive* workplace and make sure they are familiar with Section 7, discussed below in the *most restrictive* workplace discussion.

Most Restrictive: Prohibiting Political Discussions

An employer is within its rights to attempt to ban almost all political discussions in the workplace (the exceptions are discussed below). That said, the risks of this approach are significant. A strict ban on talking politics in the workplace risks sending a message that an employer does not trust employees to use good judgment and engage with coworkers respectfully. It also fails to recognize the impact that current political and social issues have on employees.

Employers may also find it difficult to delineate what is considered political versus not political. What one person might consider an over-politicized issue may be very personal to someone else. For instance, prohibiting discussions about religious freedom, Black Lives Matter, and LGBTQ rights could feel like a

prohibition on discussing an employee's basic human experience. This can lead to feelings of exclusion and can potentially fuel claims of discrimination.

It is a common misconception that all speech is protected in all places, but the First Amendment right to free speech only protects people from having their speech limited by the *government*. Private employers are free to regulate speech in almost any way that does not conflict with Section 7 of the National Labor Relations Act.

Section 7 of the National Labor Relations Act gives non-supervisory employees the right to discuss the terms and conditions of their employment at any time, in any forum (e.g., the break room, the sidewalk, Facebook, or Yelp).

This includes discussing:

- How much money they make, including any opinions about how their pay is impacted by race, national origin, sex, or their inclusion in any other protected class.
- Workplace safety, whether it relates to COVID-19, coming in to work during protests, specific hazards, or anything else safety related.
- Employer-required or recommended personal protective equipment.
- Treatment from management.
- Shift assignments.
- Anything related to unionizing.

While this law protects some political activities, it does not give employees the right to discuss politics that are not work-related during work hours.

Employers that intend to limit workplace conversations should learn about Section 7 of the NLRA since it is easy to violate if its protections are not fully understood. Employers should make it clear in their communications that the company does not prohibit conversations that would be protected under the NLRA and does not limit employees' ability to engage in off-duty political activities, but may investigate off-duty conduct that violates company policy.

When Employees Speak with Their Wardrobe

As a general matter, employers can set and enforce consistently applied neutral uniform policies and dress codes. However, the NLRA makes it illegal to prohibit employees from wearing union buttons, t-shirts, and other insignia related to working conditions unless special circumstances warrant the restriction, such as legitimate safety concerns.

Some workplaces ban clothing with graphics or slogans regardless of the political climate, which will generally solve for the political clothing problem automatically. But employers that have had a lax dress code (or, in many cases, no dress code) should consider whether the benefits of implementing stricter guidelines would outweigh the potential negative impact on culture and morale.

Part II: Voting Leave

It comes as a surprise to many employers that a majority of states require that employees be given time off to vote, and in many cases, that time must be paid.

While we encourage employers to go above and beyond the bare minimum in any given year, the pandemic makes added flexibility especially important and helpful this year. Those who plan to vote on November 3 may face numerous challenges, including long lines, extended travel to dropbox locations, and kids who need supervision during the day. Even where it is possible to vote by mail or absentee ballot, experts anticipate that many people will still want to vote in person, so it is important not to assume that everyone can or should vote by mail.

Employers can do their part to encourage voting participation by removing obstacles at work.

And chances are those actions will pay dividends. A July 2018 Global Strategy Group survey found that 76 percent of people were more likely to work for a company that promoted democracy, 81 percent were more likely to buy that company's products or services, and 81 percent were more likely to recommend the company to their friends or family.

Ways to Facilitate Voting

The most generous approach to encourage voting is making Election Day a paid holiday. This will maximize employees' ability to vote without concern over lost income. However, this is not an option for many businesses, so employers may consider some of the following alternatives:

- Make Election Day a no-meetings day. Any meetings that are already scheduled should be rescheduled.
- Make Election Day a meeting-light day. Move meetings to allow the most time for voting and shorten meeting agendas.
- Work with managers to accommodate absences due to voting.
- Provide as much paid time off as an employee reasonably needs to vote (even if it is not required by law).
- Trust employee estimates of how much time is reasonable or sufficient. Anticipate long lines.
- Be flexible and plan for last-minute voting leave requests.

Voter Education and Civic Engagement

Employers can help employees to be well informed of their state voting requirements and procedures and can take steps to promote civic engagement. Suggestions for this extra step include:

- Provide nonpartisan information about voting processes and procedures in the state(s) where the company operates. There are many resources for this online. Choose a credible, nonpartisan source to share.
- Provide links to nonpartisan sites with information on how to volunteer as a poll worker or otherwise be involved with helping ensure a safe and smooth election process.
- Encourage employees to explore early voting options where applicable.
- Provide paid time off (volunteer time off) for voting-related volunteer activities such as being a poll worker.

A few things *not* to do:

- Attempt to influence the political decisions of employees (e.g., by saying, "*Our business won't survive if candidate X gets elected.*" or "*If you want to have a job, vote for candidate Y.*")
- Provide partisan information to employees.
- Force any employee or group of employees to participate in any political discussion, even if it seems nonpartisan.
- Ask employees how they voted.
- Take adverse actions, threaten, or retaliate against employees for how they vote or for their political beliefs.

Whatever the company decides, even if it is to provide the minimum required by law, it should communicate early and often about employees' ability to take the needed time off to vote.

Part III: Manager Guidelines

In whatever way an employer decides to address workplace political discussion and voting leave, communication around manager expectations is key. Consider guiding managers to:

- Unify their team as much as possible while making space for different perspectives.
- If differing political beliefs create tension, help employees separate the person from their politics by getting to know one another's hobbies, pets, family, or life goals.
- Ground discussions in company values or strategic goals instead of political persuasion. For example, "The company believes racial justice is a human rights issue and aligns with our desire to create an inclusive workplace."
- Limit discussion of their own political beliefs to avoid an appearance of favoritism for team members with similar beliefs.
- Monitor team discussions and climate, helping to redirect conversations as needed.
- Know the applicable state voting leave requirements and be as flexible as possible in allowing time off to vote.
- Follow company policy related to social media engagement with team members and colleagues.
- Avoid getting involved in employees' off-the-clock political lives unless it has a connection to work or violates a company policy. Concerns about off-duty political activities should be brought to HR for guidance.
- Do not attempt to influence employees' political decisions or ask whom they voted for.
- Do not take adverse actions, threaten, or retaliate against employees for how they vote or their political beliefs.