

Managing Political Discussions in Florida's Private Workplaces: What Employers Need to Know

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Introduction

As the election draws near, private (nongovernmental) employers in Tampa Bay face unique challenges regarding political speech in the workplace. While they have considerable flexibility to regulate political speech, they must navigate federal and state limitations. Federal laws, such as the National Labor Relations Act (NLRA) and the antidiscrimination laws, as well as other state and local laws protect political speech, activities, or affiliation of employees. With social media blurring the lines between personal and professional life, off-duty political speech can have workplace implications and as such, employers should implement clear policies on political speech in the workplace to minimize legal risks.

With less than 20 days until the 2024 election, it is unrealistic for employers to expect employees to leave political discussions at the door when they sign on for work. Political discussions can quickly become disruptive which can, in turn, have broad negative implications in the workplace. But telling employees they can't have these discussions may not be the solution. This article examines the legal framework for political speech in private workplaces, highlights key legal protections and limitations, and provides guidance for employers across Tampa Bay navigating the challenges posed by political expression in the lead-up to the election.

First Amendment: Does it Apply to Private Employers?

It is a common misconception that the First Amendment protects speech rights in all settings. However, the First Amendment protects individuals from government interference in their speech, not from actions taken by private employers. In Florida, as in most states, employees in the private sector do not have a constitutional right to free speech at work. In other words, there is no federal or state constitutionally protected right of political free speech in the workplace for employees of private employers. This gives private employers significant flexibility in regulating or restricting political expression within the workplace, particularly when it devolves into activities that do not align with company policies or behavioral expectations. However, employers must be mindful of specific federal, state, and local limitations.

Federal, State and Local Protections on Workplace Political Speech

The federal government has laws that impact employees' political expression, including the NLRA, antidiscrimination laws, and laws concerning off-duty conduct.

The NLRA offers protection to unionized and nonunionized employees engaging in concerted activities for mutual aid or protection. "Concerted activities" include political speech related to labor conditions such as wages, hours, discrimination, and other terms or conditions of employment. National Labor Relations Board (NLRB) General Counsel Jennifer Abruzzo

(“Abruzzo”), expressed interest in expanding the definition of protected concerted activity to include social justice and certain “political statements,” such as writing phrases in support of political and social causes on company uniforms. Additionally, Abruzzo issued a memorandum claiming that “captive audience” meetings, which are mandatory employer-sponsored meetings to educate employees on certain topics, including the employer’s views on unionization, violate the NLRA.

While political speech, activities, or affiliation are not protected categories under the federal antidiscrimination laws, these could be implicated when political expression overlaps with protected categories such as race, religion, sex, or other legally protected categories. For this reason, employers must enforce political speech policies consistently to ensure they do not unintentionally engage in discriminatory practices.

In addition to federal laws impacting employers, under Florida Statutes Section 104.081, it is a third-degree felony for an employer to terminate or threaten to terminate any employee for voting or not voting for a specific measure or candidate. While political speech, activities, or affiliation are not protected categories under Florida antidiscrimination statutes, many local governments, including Broward County and the City of Miami Beach, include political affiliation as a category protected from employment discrimination.

Social Media and Off-Duty Political Speech

Some states, not including Florida, have adopted laws that restrict private employers from discriminating based on employees’ lawful off-duty conduct. However, with the rise of social media, the line between on-duty and off-duty conduct has blurred, and Tampa Bay employers need to carefully consider how to approach employees’ political statements on social media.

Employees often use platforms like Facebook, X (formerly known as Twitter), and Tik Tok to express their political views during off-duty hours, and these expressions can sometimes amplify an employer’s potential liability. Some examples include an employee that posts on their personal social media account for the benefit or aid of other coworkers, or a post that ties political speech to the employees’ protected characteristics. These examples could lead to liability under federal and state antidiscrimination laws and the NLRA. That being said, employees may be disciplined for social media posts unrelated to concerted activity in the workplace, including discriminatory, threatening, harassing, bullying, vulgar or obscene statements.

Best Practices for Employers:

- **Be Proactive – Implement and Distribute Policies on Political Speech in the Workplace:** Create and communicate clear policies on political messaging that comply with the applicable labor and employment laws. These policies can restrict forms of political messaging unrelated to the workplace, attire, or discussions during work hours.
- **Evaluate Conduct on a Case-By-Case Basis and Investigate Complaints:** Monitor conduct, address issues promptly and thoroughly, and investigate all complaints.
- **Be Consistent:** Enforce political speech policies fairly and consistently to avoid claims of bias or discrimination.

- **Ensure Discipline is Imposed Uniformly:** Enforce rules of conduct and discipline employees whose actions disrupt the workplace, even if the actions are politically related. The focus of the adverse action should be on the employee's disruptive behavior and not the opinions expressed by the employee. However, ensure that any discipline is imposed uniformly, without regard to categories protected by antidiscrimination laws, such as religion, race, sex, disability, age or national origin.

Conclusion

As the election approaches, private employers must carefully manage political speech in their workplaces. While they have broad discretion in regulating political expression, they may be subject to a complex wave of federal and state laws prohibiting voting related retaliation, local laws safeguarding political affiliation, and speech related to labor issues. Additionally, antidiscrimination statutes may come into play when political speech intersects with protected traits. By establishing clear and consistent policies on political speech and having mechanisms in place to monitor and address issues, employers can navigate the challenges posed by political speech and maintain workplace harmony while minimizing legal risks.

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