

# Personnel Today

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## Election 2015: employees' rights to their opinions

By Karen Baxter And Sal Simao on 14 Apr 2015 in Human rights, Leave, Political elections, USA



Does an employee have a right to wear items that display their political beliefs?

**With the UK's general election looming large, Karen Baxter of UK law firm Lewis Silkin and Sal Simao of US law firm Ford Harrison examine workplace legislation around taking time off to vote and staking a political allegiance.**

The election makes it more likely than ever that water cooler chats will turn to political matters. Employees may try to sway floating voter colleagues to their cause or they may wear visible signs of their political allegiance.

They may may even express political opinions which other employees find offensive.

Should an employer intervene in these heated political debates?

There is certainly no requirement to stop employees from talking about their political opinions, however, if an employee's views are causing friction between colleagues, possibly leading to others feeling offended or humiliated, an employer would need to intervene in order to prevent allegations of bullying or harassment.

Where an employee has gone as far as to create a humiliating, degrading or offensive environment for other employees, the employer could discipline, or even dismiss them. Dismissal could be fair as long as it was because of the impact of their comments, as opposed to the mere fact that they hold these beliefs in the first place.

A more difficult issue is where an employee is known to hold political views that the employer does not wish to be associated with.

Dismissing the employee solely on account of his or her political views could be unfair and the employee would not need to have two years' service to bring this claim.

This was illustrated by the case of a BNP member who was dismissed from his job as a bus driver solely on account of how customers might perceive his political views ([Redfearn v United Kingdom](#)).

Action short of dismissal (for example, demoting the employee) could lead to a claim for discrimination on political grounds. In the UK, only Northern Ireland specifically outlaws political discrimination.

For the rest of the UK, the Equality Act 2010 includes protection from discrimination on grounds of "philosophical belief" and cases have gone either way as to whether or not political belief falls within this.

As such, there would be some risk if an employer took action based solely on the political views of an employee, as opposed to the impact that those views are having on others.

To avoid problems in the run up to election day, employers should treat all political affiliations equally when it comes to

time off to vote and remind employees to treat others with respect.

### Time off to vote in elections

An issue that may arise on 7 May is what, if any, arrangements employers should make to enable their employees to vote.

Polling booths in the UK are open from 7am until 10pm and employees are often expected to cast their vote before or after work, or during their lunch break.

But what about employees who have long commutes or work shifts and cannot make it to the ballot in time? Or if they are urgently needed at a client meeting far from home? And what of employees who get to the polls at 9.30pm, only to find a queue snaking down the road with no prospect of casting their vote before they close?

It is, of course, possible to get a postal or proxy vote but this requires forward planning. Could an employee who was counting on slipping out during work hours bring a claim against their employer if it refuses them time off to vote?

Employees in the UK have lots of rights to time off work. They can look for a new job when facing redundancy, deal with an emergency for a dependent, or perform certain public duties. It is perhaps surprising that they do not have a standalone right to take time off to vote. An employer could refuse an employee's request to take time off for this purpose.

Contrast this to the position in the US. Although there is still no federal law requiring employers to give employees time off to vote during the work day, 32 states and Puerto Rico have enacted laws which require just that.

Most states' voting leave laws require employers to provide employees "necessary" time off to vote, unless polls are open for a period of time before and after the employee is scheduled to work. Depending on the state, the time off may be paid or unpaid.

Is there anything that UK employers should do if they are asked by an employee for time off to vote? Fundamentally, it will be down to an employer's discretion whether or not to agree to the request.

Employers should exercise their discretion in a manner which is not "arbitrary, irrational or capricious", such as could be argued to breach the implied term of trust and confidence. Employers should also be cautious of saying yes to some employees but no to others. Without good reason, this could lead to an allegation of discrimination.



About Karen Baxter and Sal Simao

Karen Baxter, left, is a partner at UK law firm [Lewis Silkin](#) and Sal Simao is a partner at US law firm [Ford Harrison](#), member firms of global employment law firm alliance [Ius Laboris](#).

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