The Work Week

Bassford Remele Employment Practice Group

July 29, 2024

Welcome to another edition of *The Work Week with Bassford Remele.* Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Political Talk at Work: What to do When Water Cooler Talk Boils Over

Peggah Navab

As election season ramps up, along with the news cycle and public opinion surrounding it, our personal beliefs and political views might seep into the workplace. On its face, politics in the workplace do not pose any direct legal problems for employers; they just might make for a tense and uncomfortable environment. But the way employers respond to political discussions can create legal trouble.

Many people assume that the First Amendment guarantees them the right to free speech in any circumstance, even while at work. This is not exactly the case. The First Amendment has a fairly narrow reach; it only regulates government action (*i.e.*, public not private employers). If private employers do not want their employees talking politics at work, the First Amendment does not stop them from restricting those discussions.

However, there are other federal laws and new state laws that should make employers think twice about either restricting or imposing any political discussions in the workplace.

The National Labor Relations Act ("NLRA"), which guarantees employees' rights to organize to improve their work conditions, can cover political discussions so long as they are connected to group activity. Specifically, Section 7 of the NLRA protects employees when they "engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. § 157. In 2023, the National Labor Relations Board expanded its standard for interpreting "concerted activity." Whereas it previously applied a stringent five-factor test to determine what qualifies as concerted activity, it now takes a wholistic approach, looking to the "totality of all available evidence." Under this broader interpretation, acts of political protest or speech that might only seem tangentially related to labor

organizing can be viewed as "concerted activity." Case in point is a February, 2024 ruling where the NLRB ordered a Home Depot to reinstate a worker it had fired for wearing a Black Lives Matter marking on his work apron. The NLRB said the marking was "concerted" and for "mutual aid or protection" because of earlier protests by workers at the store about racial discrimination.

Outside of the NLRA, many states, Minnesota included, are passing "Captive Audience laws," prohibiting mandatory attendance at employer-sponsored meetings on political or religious topics. Last year, Minnesota passed new legislation that bans employers from disciplining or threatening to discipline employees who decline to attend employer-sponsored meetings or decline to receive employer communications that are related to political or religious matters. *See* Minn. Stat. § 181.531. The law does not prohibit voluntary employee participation in political or religious discussions or prohibit employers from communicating legally required information that is political or religious in nature.

Employers should also keep in mind that restricting political discussions in the workplace might make them vulnerable to employee discrimination claims under Title VII. Title VII does not protect political speech but could still be implicated. If, for example, employers restrict political expression of some employees but not others, they may be opening themselves up to claims of Title VII violations.

As the 2024 political season continues to heat up, the Bassford Remele Employment Group is here to help you navigate any sensitive conversations or issues that arise.

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