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LEGAL UPDATES

Politics in the Workplace: Beware of Laws Protecting Political Affiliations and Opinions

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04/05/2023 | 2 minute read

With campaigns for next year's presidential election already starting and a former President facing indictment, discussion of political issues is certain to intensify in the coming months both inside and outside the workplace. While every election cycle prompts the expression of political opinions, the current political climate seems to be more polarized than ever before, energized by opinions concerning the *Dobbs v. Jackson Women's Healthcare* decision, racial justice, and law enforcement, among other issues. Discussions about politics will undoubtedly occur among employees with increasing frequency as elections approach, with firm opinions expressed by persons of all political persuasions.

Most employers are generally familiar with the laws that prohibit discrimination based on race, sex, age, religion, disability, and certain other protected characteristics, but many are not aware that the law also protects employees in their exercise of political rights. Specifically, California Labor Code Sections 1101 and 1102 prohibit employers from attempting to control or direct the political activities or affiliations of their employees, and prohibit employers from discharging or taking other adverse action against employees for their political activities.

The laws protecting the right to political activity and expression can be particularly problematic for employers because they impose liability for violations committed by managers and employees, and violations of the law constitute a criminal offense in addition to subjecting the employer to civil liability. Prudent employers should assure that their managers understand the laws that protect employees in their exercise of political rights.

While employers are forbidden from attempting to control the political opinions and affiliations of their employees, a critical distinction exists between interfering with the political rights of employees and insisting that employees focus on their jobs (and permit their colleagues to do the same) during work hours. All employers have a legitimate interest in preventing any non-work activity (be it political discussion or conversation about a less controversial topic) from interfering with the efficient operation of their businesses.

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Employers may not be able to control the political opinions or affiliations of their employees, but they can generally insist that employees focus on their jobs during work hours. If political discussion impairs productivity (either of the speaker or of the person(s) to whom the political speech is addressed), management can intervene. An added layer of complexity may exist if the political speech relates to a union issue; employers should proceed with particular caution (and should generally confer with counsel) whenever considering action in response to speech or activities related to collective bargaining.

Employers are also entitled in most instances to prevent employees from posting any written or printed materials in the workplace, including materials of a political nature. Employers should be consistent in their enforcement of any policy they may adopt against postings in the workplace, however. If an organization refuses to permit a posting concerning a particular issue or point of view, it should similarly refuse to allow other political postings.

Employers encountering issues related to political expression or affiliation should confer with counsel before taking any action against an employee. If you have questions about the laws protecting employees in their exercise of political rights, or any other issue relating to employment law, please contact one of our attorneys.