

# Election 2024: Dealing With Political Expression at Work

## Labor & Employment Law Update

By Beverly Alfon on October 28, 2024

**“Harris Walz, Obviously.” “Trump 2024 – Take America Back.”** These words are on signs that pepper front lawns and store fronts across the country. Consider what compels someone to make their stance so public. **It’s because (maybe now more than ever before) a person’s political stance on the most hotly debated issues is so strongly tied to their personal identity.** This is exactly why employers cannot ignore the real likelihood that political expression will seep into the workplace.

At a minimum, the legal complexities that these situations create require employers to keep the following in mind.

### There Is No Right to Free Speech in the Workplace

The First Amendment protection against governmental regulation of speech does not extend to the private-sector employment relationship. Private employers can generally regulate political speech and expression.

### Legal Restrictions on Employers Nonetheless Exist

- **National Labor Relations Act (NLRA).** The NLRA gives private sector (union **and non-union**) workers the right to engage in concerted activity for the purposes of collective bargaining “or other mutual aid or protection.” The NLRA’s protections extend to statements and actions that employees engage in together related to work terms and conditions—which may extend to discussions about wages, job security, and controversial issues like immigration and a federal standard for paid leave. So, certain political discussions and their relation to work terms and conditions could be protected under the NLRA.
- **Federal, State, and Local Anti-Discrimination Laws.** If a person’s political stance is strongly tied to their identity, then political discussions can directly or indirectly implicate a person’s protected traits. What may start out as healthy debate over political issues can quickly turn into perceived attacks on race, national origin, gender, and/or other protected traits. Employers must be careful in how they handle these situations, always taking care to be consistent in addressing the situation with an eye towards equal treatment between the employees.

- **Various States Have Laws That Prohibit Employers From:**

- Taking adverse action against an employee based on participation in or refusal to participate in political expression
- Interfering with somebody's ability to vote for somebody or coercing them to vote a certain way.
- Gathering or keeping records on an employee's political activities or associations.
- Taking adverse action against employees for engaging in any lawful off-duty conduct (e.g., if an employee marches in a rally in support of a certain political candidate or attaches a political flag on the back of their vehicle – an employer may be prohibited from taking adverse action against that employee for expressing their political speech outside of work).

### Best Practices

Sooner rather than later, set your expectations with employees and frontline supervisors regarding civility, respect, communications, and compliance with all company policies during this election cycle and beyond.

When issues arise as a result of political expression, consider the nature of the conduct and speech, and the extent to which it unduly disrupts the workplace. Consider whether the speech violates an existing company policy (e.g., anti-discrimination, code of conduct, social media, etc.) and be consistent in your enforcement. Make decisions with an understanding of the applicable federal, state, and local legal protections and limitations discussed above.

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