

## Blog Post

# It's Election Season! Regulating Political Speech in the Workplace

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With less than three months to go until the general election, politics seem to be a hot topic for discussion these days! However, today's political climate is more divisive than ever, and there are many reasons why you may not want these discussions in your workplace. You also may wonder if you can prohibit your employees from wearing or displaying election-related posters, pins, hats, shirts, and other types of clothing, accessories, or political adornments.

Although private, non-governmental employers generally *do* have the right to regulate the speech, dress, and conduct, of their employees in the workplace, that right is not without limit. In fact, in some circumstances employees have a right to engage in certain types of speech while at work. Therefore, employers need to implement their workplace policies and procedures carefully to ensure they don't incidentally infringe on their employees' protected rights.

## What Rights Do Employees Have?

While the First Amendment guarantees citizens the protection of free speech from intrusion by the government, this right does not apply to private workplaces. So, unless you are a government employer, your employees do not have a federal constitutional right to free speech while at work.

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Yet, despite the lack of federal constitutional protection, many states have enacted laws that do protect private sector employees' political expression in the workplace. For example, in Colorado employers may not threaten to discharge employees because of their memberships in or connections to a political party; in North Carolina it is unlawful for an employer to take adverse action against an employee for any vote they have or may intend to cast; and in Connecticut employers are prohibited from taking adverse action against employees for exercising their First Amendment free speech rights, with certain limitations.

In addition to these state and local laws, the National Labor Relations Act (NLRA) also generally protects an employee's right to engage in concerted activities, such as speech at work, for the purpose of attempting to improve terms and conditions of employment. So, even though the NLRA doesn't specifically protect political speech, if those discussions were to implicate working conditions or wages, for example — even if not explicitly — then they could potentially be protected.

## Best Practices for Employers

First and foremost, even though political affiliation is not a protected category at the federal level, political discussions and other activities can easily cross over into other themes, such as race, sex, and religion.

Therefore, employers need to make sure any policy is drafted and implemented in a neutral and consistent manner. This means that if you choose to allow your employees to express support for a certain political cause or party you do not restrict other employees from expressing their support for an opposing cause or party. Similarly, before disciplining an employee, employers should ensure they are not inadvertently showing preferential treatment for a protected characteristic. And if you are going to implement a policy that prohibits political messaging in the workplace (such as a dress

code policy which expressly prohibits employees from wearing clothing or accessories with any messaging, slogans, logos, or advertising), then the policy should be limited to political messaging that is unrelated to the workplace to ensure you don't run afoul of the NLRA.

Moreover, while employers likely cannot stop political conversations from happening altogether, they can (and should) have policies regarding bullying, unlawful harassment, and hate speech, which set expectations on what is, and is not, appropriate workplace conduct.

If you have questions or need assistance developing your workplace policies or practices regarding speech in the workplace, please contact your Akerman labor and employment attorney.

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