

It's Time for Employers to Revisit Their Employment Policies to Be Ready to Address Political Disputes Among Coworkers

01.06.21

With political division in the United States on full display in the midst of a pandemic, Americans are faced with deepening rifts that touch not only their social circles and family units, but also their work lives. It therefore behooves employers to recognize the reality that disagreements about politics are likely to arise in one form or another in the workplace. With that in mind, employers should review their employment policies and related practices to ensure they are ready to address workplace disputes centered on politics, especially in light of the telecommuting arrangements that many employers are still utilizing during the pandemic.

The [First Amendment](#)'s right to free speech generally does not cover private employers, so employers are not required to permit their workplaces (virtual or otherwise) to be veritable political soapboxes. That said, employees in the private sector do have certain workplace rights relevant to politics and subject to applicable state law, including—in Texas, for example—the right to [paid voting leave](#) and the [right to attend political conventions](#) (if eligible to participate or a delegate). Further, employees generally have the right to be free from [harassment based on a protected class](#) and [have certain protections against workplace bullying or violence of any kind](#).

Keep in mind that even though a lot of employees are still working remotely during the ongoing COVID-19 pandemic, email accounts, social media outlets, and general virtual connectivity create other avenues for discrimination, retaliation, harassment, bullying, or threats between employees. Frankly, [as some assert](#), the virtual “wall” may embolden individuals to say things that they otherwise would not. Employers must therefore strike an appropriate balance between the competing interests and employment rights in play in a deeply divided workforce when it comes to politics.

The following policies should be reviewed and updated (as necessary) and implemented to strike that balance:

Codes of Conduct and / or Harassment / Discrimination Policies: Generally, neither [Texas](#) nor [federal](#) laws protect individuals from discrimination based on their political affiliations or political opinions, but some state laws have related protections. See, e.g., [Cal. Lab. Code § 1101](#) (prohibiting employers from discriminating against employees based on employees' political activities or affiliations); [Wis. State. § 111.365\(1\)](#) (stating that “employment discrimination” includes discrimination against an employee for “declining to attend a meeting or to participate in any communication about religious matters or political matters”). Of course, current political issues involve a number of protected classes, such as race, national origin, gender, and [sexual orientation](#). So the potential for there to be workplace discrimination, harassment, and bullying based on protected classes under the guise of political affiliations or opinions is very real. Employers must therefore ensure they have [implemented employment policies prohibiting discrimination](#) (including discrimination and related bullying in a virtual or remote working environment) and establishing procedures for employees to lodge complaints about discrimination. They should also train all employees, including managers, regarding the same.

Social Media: For better or worse, social media outlets have moved even more into the front lines of politics this election cycle. The potential for discrimination and harassment is likewise increasing with the advent of new and more pervasive social media technology. The [Texas Workforce Commission \(TWC\)](#) minces no words about this reality when it states, “[while the technology has improved dramatically, there has been no corresponding upswing in common sense or decency in society](#),” when it comes to social media usage. [Social media policies](#) should therefore make clear that employees are not allowed to purport to speak on the employer's behalf on social media or otherwise use social media outlets to discriminate against or harass coworkers.

Computer / Internet Usage: Similarly, employers should exercise their rights to monitor employees' work emails and use of company computers and prohibit the use of company technology and Internet to discriminate against or harass coworkers. Such [policies](#) should clarify that employees have no reasonable expectation of privacy in company computers and work email accounts. Note, however, that under the federal [Stored Communications Act](#), [employers generally do not](#)

have the right to *monitor employees' personal email accounts*, even if the employee uses a work computer to access the personal account. That said, discriminatory or harassing communications sent by an employee to a coworker using either a work or personal account are potentially actionable and can serve as the basis of a legitimate complaint by the victim of the same.

These are certainly not the only policies that are in play in these unprecedented times, but they are key places for employers to start as they consider these issues in their workplaces. Employers should ensure such policies are up to date and provided to and acknowledged by their employees. And, as always, employers are well-advised to involve their senior management team and appropriate legal counsel when workplace disputes and issues arise, including when reviewing, updating, and implementing personnel policies.

Contact:

[Taylor White](#) | 214.745.5175 | twhite@winstead.com

Disclaimer: Content contained within this news alert provides information on general legal issues and is not intended to provide advice on any specific legal matter or factual situation. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. Readers should not act upon this information without seeking professional counsel.