

Electronic Alert

Volume 19, Issue 31

November 4, 2016

The 2016 Election Season: Political Speech at Work By Andrew Schpak and Nicole Elgin

With the height of the campaign season here, you may have some employees who are vocal about the elections. Employers may not know the best way to address those types of political statements that may be protected by free speech rights under the First Amendment. While public employers may only restrict employees' speech in limited circumstances, private employers can and do place some restrictions on employees' political speech at work. These policies can be beneficial because debates on political candidates often spill over into statements about religion, gender, immigration, and other hot-button issues.

Generally, a private employer's policies about political speech at work should balance the employer's interest in maintaining order and productivity with the employee's right to free speech. Employers should remember:

1. **Be consistent.** Do not implement policies that tend to favor one political party over another. Also, be sure to consistently enforce any policies that might restrict political speech. If you tend to only enforce political speech policies when the speech concerns a particular candidate or a particular political party, you may increase your risk of liability. Next, review your handbook! If your handbook contains a policy about appropriate workplace speech, make sure that the enforcement is consistent with the policy.
2. **Do not influence employees.** In Oregon, employers may not directly or indirectly influence any person's right to vote, including registering to vote, refraining from registering, or voting in a particular manner. Undue influence can include force, bribes, and threat or termination of employment. Employers should remind supervisors to be cautious when discussing elections or voting with their employees.
3. **Maintain guidelines.** When drafting policies about political speech in the workplace, make sure the policies tolerate all lawful political views. Employers may also consider language that reminds employees to respect one another's political ideas. These policies should be written and available to all employees, preferably in a handbook. Also, consider sending a reminder about guidelines for political speech at work before Election Day.
4. **Nonprofits be careful!** 501(c)(3) nonprofits can lose their tax-exempt status if they engage in political campaigning. Under this rule, nonprofits are forbidden from directly or indirectly participating in a political campaign in support or opposition of any candidate for public office. However, nonprofits generally can engage in non-partisan activities and some legislative issues. Because the IRS may revoke the tax-exempt status or impose excise taxes on nonprofits in

violation of this rule, these organizations should be extremely careful when engaging in any sort of political activity.

Employers should contact Barran Liebman with concerns or any questions about their Political Speech Policies.