



Political Speech In Workplace Not As Free As On Street

Publication

10.10.12

With a presidential election on the horizon, everyone seems to have strong opinions about the candidates and issues. Inevitably, these opinions come up during conversations in the workplace. Not only could such conversations disrupt the workplace, but employers and employees could put themselves at legal risk if they don't fully understand the laws that govern political speech at work.

One recent study showed that 35 percent of employers openly share their political views with employees. Another showed that 80 percent of employees believe it would be illegal for employers to terminate them for engaging in political expression at work. People are surprised to learn that free speech at work isn't the same as free speech on the street. A number of laws apply to speech in the workplace.

Since political campaigning is considered protected speech under the First Amendment, it would seem that everyone may exercise this right at work. But that is where many employees are wrong. In fact, the First Amendment applies only to state action — that of federal, state or local governments and some quasi-governmental entities. These protections do not apply in the private workplace and an employer does not violate the Constitution by firing an employee for expressing views contrary to those of the employer.

But such a discharge may violate other laws, including the National Labor Relations Act. The National Labor Relations Act, which covers private employers, may not apply directly to political speech per se in the private workplace. But it does give non-supervisory employees the right to engage in "concerted activities for the purpose of collective bargaining or other mutual aid or protection." While the law protects some expression outside of the immediate employee-employer relationship, when the subject of an employee's political activity is so attenuated that it does not relate to his employment, it is not protected by the law.

Employers also need to be aware of issues surrounding political activity by an employer, such as solicitations for political contributions and visits by candidates. Employers must be careful that their discussions of candidates or issues do not imply directly or even indirectly that they will discriminate, harass or retaliate against any employee based on their opinions which may be somehow related to their status in a protected class.

Both employees and employers have rights in this area and employers should check with their legal counsel before adopting overbroad restrictions on employee political activities or taking adverse

counsel before adopting overbroad restrictions on employee political activities or taking adverse action against an employee for such activities.

This article appeared in the October 10, 2012 issue of *Daily Business Review*.