

LEGAL
SMARTS

Campaign 2012

Coming to a Workplace Near You

Whether you are hoping that President Barack Obama is re-elected to a second term, or your hope rests with Mitt Romney, one thing is sure — just about everyone has an opinion about Campaign 2012. One other thing is universally recognized: Employees do not generally check their political opinions at the door when they come to work.

Business owners, human resource professionals, and management must prepare for the possible impact of political activities and the expression of passionate and strong political views in the workplace spurred by Campaign 2012. Advance preparation is key.

One of the time-honored rules of proper business etiquette is that political discussions in the workplace are generally disfavored. With the November elections rapidly approaching, along with a highly energized and fragmented electorate, can employers simply ban political discussions and political activities in the workplace? Is political expression a right of every American, even at work? Don't Americans have the right to express their political views, whether they're at work or elsewhere?

In most states, workers are employed at the will of the employer. In states that fully embrace the at-will employment doctrine, employers may discharge an employee at any time and for any reason, so long as the decision is not premised upon unlawful discrimination based on race, color, gender, national origin, religion, age, disability and genetic information. Notably absent from this list is engaging in political activity or expression in the workplace. Because political expression and affiliation are not protected categories under existing anti-discrimination laws, in most instances where the at-will employment doctrine is recognized, employers may implement an adverse employment action even if it is based on political affiliation or activity.

What about the protections of the First Amendment? The First

Amendment provides that Congress shall make no law abridging the freedom of speech or the right of the people to peaceably assemble and petition the government for redress. By its own terms, the First Amendment only protects individuals against government action. Employees in the private sector generally have no First Amendment right to express political views in the workplace. There are a few states, including, among others, California, Connecticut, South Carolina, and Washington, where there is limited First Amendment protection against curtailing political activity.

But what's the harm in a little political talk in the workplace? Because political issues can stir up intense emotions, potentially divisive topics, such as race, national origin, and religion, may end up forming the basis of political discussions. Such topics could lead to allegations of bullying and the creation of a hostile work environment.



Employers should monitor the workforce for that type of unwanted behavior and review — well in advance of the political campaign season — all policies and procedures related to bullying and a hostile work environment, as well as policies requiring employers to provide a safe workplace. Any allegation of bullying and harassment should also be swiftly and thoroughly investigated. Finally, because the majority of states require employers to allow employees time off to vote on Election Day, some additional advance planning may be required. **AT**

Thomas A. Cox, Jr., is a member of EpsteinBeckerGreen in the Atlanta and Washington, D.C., offices. He represents corporate employers in all facets of labor and employment litigation defense, counseling on Affirmative Action and EEO Compliance and corporate training. He can be reached at 404.923.9000, or via e-mail at tc Cox@ebglaw.com.