

Policies

Employers should clearly articulate policies on political discussions and the distribution and display of political information and paraphernalia at work, and enforce these policies consistently.

Encourage Respectful Political Dialogue

You cannot and would not want to prohibit political discussions, even when there is some disagreement among employees. However, you should make clear that working is the priority, and that political discussion that disrupts the work environment is inappropriate. You should ensure that your code of conduct clearly lays out that the company and its employees should respect diverse opinions, beliefs, values, and goals. If there are specific topics that you have found lead to heated arguments and unproductive, offensive behavior, you may ask your employees to refrain from discussing those topics at the workplace during working hours.¹ When conversations become heated or discriminatory, you can designate a manager or human resources employee to have a confidential conversation with the employee involved, informing him or her that the discussion could make others feel uncomfortable and limit productivity, and may make the company liable in a discrimination or hostile work environment claim.

Limit the Display and Distribution of Political Information and Paraphernalia

You may prevent employees from using internal electronic communications systems and physical space at work to solicit and distribute political information.² In order to do this, you can enforce a written policy that prohibits the solicitation and distribution of non-company materials during work hours.

Additionally, you may request that employees refrain from wearing or displaying campaign paraphernalia, such as buttons and t-shirts, if it

interferes with worker morale or productivity, or if an employee who wears politically branded clothing interacts with customers and clients.³

Remember that consistent enforcement of these policies, along with ensuring your employees have access to and understand the policies, is key. Disciplining one employee's political speech while turning a blind eye to another's may serve as a basis for discrimination claims. If you find that employees question these policies, remind your employees that you are just trying to create a harassment-free workplace, and that the First Amendment and free speech right of the California Constitution do not protect against private action. See *Grinzi v. San Diego Hospice Corp.*, 120 Cal. App. 4th 72, 79 (2004); *Golden Gateway Center v. Golden Gateway Tenants Assn.*, 26 Cal. 4th 1013, 1031 (2001).

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Role of Managers and Supervisors

Managers and supervisors should set examples for these policies by refraining from engaging in political disputes. If a manager or supervisor does engage in inappropriate, hostile political discussions, remember that the policies need to be enforced consistently in order to be most effective.

Additionally, managers and supervisors

should be very familiar with the policies and trained to intervene in heated situations immediately. They should be aware that ignoring such discussions may not prevent a situation from escalating, and it may give the impression of approval.

While maintaining a professional atmosphere free of politically based conflicts is essential, it is also important to remember that your employees have civil and political rights that you may not infringe upon.

Political Affiliations

Employers may not forbid or prevent employees from "engaging or participating in politics or from becoming candidates for public office," or "[c]ontrolling or directing, or tending to control or direct the political activities or affiliations of employees." Labor Code § 1101. Additionally, employers may not coerce employees to adopt a particular course of political action. Labor Code § 1102.⁴ Therefore, it is important for representatives of management to refrain from engaging in heated political debates so that employees do not feel pressured to conform to their supervisor's political views.

"Time Off to Vote" Notices

The ability to be an active civic participant is an essential right in our society, and California's legislature enacted a statute to protect that right for those who work during voting hours. Election Code § 14000 requires that employers provide employees with sufficient time to vote in statewide elections during working hours, and that employers post notices outlining the process for taking leave for the purpose of voting 10 days before the election.⁵ Employees can be given as much time as they need to vote, but a maximum of two hours is paid. Additionally, employers can place restrictions on this process by requiring that the time off only be taken at the beginning or end of the employee's shift, or by requiring advance notice of at least two working days prior to the election.

(Continued on page 3)

Conclusion

In order to maintain a workplace environment that values and encourages diversity and dialogue, it is important to respect the right of your employees to be politically active and not to restrict their free speech. However, to ensure that political conversations involving differing beliefs do not devolve into arguments that distract from work and could potentially form the basis for a discrimination suit, you should:

- 1) implement the appropriate workplace policies while emphasizing the importance of maintaining a tolerant environment,
- 2) ensure that your employees are familiar with the policies, and 3) apply the policies in a consistent manner.

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- 1 See National Labor Relations Board, Memorandum GC 08-10: Guideline Memorandum Concerning Unfair Labor Practices Charges Involving Political Advocacy (Jul. 22, 2008).
- 2 See e.g., *Republic Aviation Corp. v. National Labor Relations Board*, 324 U.S. 793, 803 n. 10 (1945).
- 3 See National Labor Relations Board, Memorandum GC 08-10: Guideline Memorandum Concerning Unfair Labor Practices Charges Involving Political Advocacy (Jul. 22, 2008).
- 4 Violation of these sections is a misdemeanor. Individuals are punishable by imprisonment in the county jail for less than one year and a fine not to exceed \$1,000. Corporations may be subject to a fine not to exceed \$5,000. Labor Code § 1103.
- 5 See e.g., Secretary of State Debra Bowen, Time Off to Vote Poster, available at http://www.sos.ca.gov/elections/tov_final.pdf.