

Watercooler Politics: Can You Discipline 'Overly Political' Workers?

While the Jan. 3 Iowa caucuses feel like the end of a long campaign season, it's really just the beginning of a heated political year ... one that could spill over into your workplace.

What if one of your workers skips a shift to attend a political rally about a minimum wage ballot measure? What if a different employee starts wearing a big Romney button on the shop floor?



Even though the National Labor Relations Act (NLRA) mostly governs union workplaces, it also governs some political advocacy in nonunion workplaces, too. Specifically, it protects employees from discipline if they engage in conduct relating to their pay, benefits or working conditions.

In 2008, the National Labor Relations Board (NLRB) [published a memo that spelled out when political advocacy is protected](#). Employers need to be aware of two key issues:

1. The subject matter of advocacy. Basically, advocacy related to the employee's specific job and conditions of employment are protected. In addition, protection is extended to advocacy in which there is "direct nexus between the specific issue" being advocated and "a specifically identified employment concern of the participating employees." So, for example, supporting a ballot measure on minimum wage issues could be connected to the employee's pay. Complaints that aren't related to work issues typically aren't protected.

2. How the advocacy is carried out. "Employees do not have carte blanche to carry out protected activity in any way they choose," says [Jan Hensel](#), an attorney at Dinsmore & Shohl in Columbus, Ohio.

The NLRB memo lays out the proper means for employees to perform "protected activities" within the NLRA's protections. Hensel says three rules apply:

- Political activity occurring during nonwork time and in nonwork areas is generally protected.
- On-duty political advocacy related to a specifically identified employment concern can be subject to restrictions imposed by your organization's work rules (as long as they're lawful and neutrally applied).
- Leaving or stopping work to engage in political advocacy can also be subject to your company's restrictions (again, if legal and applied fairly).

Bottom line: Navigating the NLRA is confusing ... and common sense is often left on the sidelines. Be fair and evenhanded, but when in doubt, allow political advocacy when possible (*see tips below*). Before applying discipline, check your your attorney about the legality of your actions.

5 tips for handling workplace free speech issues

Employers must balance employees' free speech rights against maintaining workplace order and productivity. Some tips:

- 1. Have a business reason for any restrictions.** Limit only those political expressions that might affect productivity or customer relations. For example, you can ask a cashier to remove a "Legalize Marijuana" button, but you can't ask him to remove an "Obama for President" bumper sticker from his car.
- 2. Be consistent and evenhanded.** Inconsistency is tough to defend in court. For example, don't make employees take off pro-Romney buttons, while allowing pro-Gingrich ones.
- 3. Provide guidelines.** Clearly tell employees that all workplace speech—political or otherwise—must be respectful, accommodating and tolerant of others' views.
- 4. Don't retaliate** against off-duty political activity.
- 5. Never press employees** to vote for a specific candidate.