

# Free speech in the workplace: 4 things you can ban employees from talking about

Many people think the First Amendment applies to all speech, but in fact, it does not include statements that take place in the private sector.

That means that employees can be banned from using speech that disrupts the company or creates conflict with customers or colleagues. There are some protections in place for workers, such as anti-discrimination laws, whistleblower laws, and local laws. Any policies developed by your company to restrict specific conversations from taking place should be prepared in a way that doesn't violate employee rights.

HR should be focused on setting policies that ensure the workplace is not hostile for any employee. Ensuring a focus on respect can help HR and management create an inclusive culture.

## Political conversations

Political conversations are often best left away from the workplace; people tend to have strong feelings and are likely to engage in aggressive or angry discussions that can lead to workplace discord and disruption.

Anger and resentment toward colleagues of differing political opinions are not unheard of, especially in today's divisive political climate. These partisan differences can affect team performance, morale, and culture.

Not only are political conversations potential issues, but symbols, clothing, and campaign materials can also bring conflict to the workplace. Today, many colleagues are also connected on social media, and companies must frame their policies to ensure that this area is not forgotten when addressing politics that spill into the workplace.

Also, the issue of political discussion around protected areas such as race, religion, or national origin can initiate workplace discrimination or retaliation complaints. Human Resources professionals and managers should monitor political conversations when possible and step in if they become too upsetting, hostile, impolite, or threatening.

Any policy created to address political discussion, symbols, and social media content must treat all employees equally. The human resources team can work together to determine what issues will only create conflict in the workplace and ensure that policies guide employees to avoid inflammatory topics.

It won't be possible to ban political discussions in the workplace entirely. Still, it is possible to encourage open communication while ensuring zero tolerance for hate speech or hostility.

## **Religious conversations**

Many employers do not have written policies around how religious discussions should be managed in the workplace, however religious dialogues, dress, and symbols are being brought into work more often.

It is illegal to refuse to hire or fire someone because of race, color, religion, sex, or national origin... but does that mean they can talk about their faith at work?

Not necessarily.

As with political speech, religious speech in the workplace can be limited by policies.

Theological conversations can be sensitive and contentious – causing issues between coworkers of differing beliefs. While employers should make reasonable accommodations for prayer, and celebration of holidays, they do not have to allow religious proselytizing at work, especially if it becomes harassment to other employees.

Employers are not required to accommodate religious conduct that creates excessive hardship, and behavior that harasses other employees or customers imposes this kind of burden on the employer.

For employers, it is a balancing act to ensure that the workplace does not become hostile or abusive to those with differing religious beliefs. When their religious beliefs impact the clothing or dress of an employee, the courts have found that reasonable accommodations should be made for employees. This can be included in the company dress code.

What can employers do about religion in the workplace? Companies should strive for inclusion, diversity, and value religious self-expression that does not impact work productivity or culture. They can also focus on ethics and values, rather than specific religious influences.

Training for HR and management can help them understand how to prevent discrimination and make reasonable accommodations. In some cases, merely offering employees the language to respond to a coworker can help – saying something like "thank you for your concern, but I am not interested in going to church right now" might be enough to stop unwelcome invitations.

Some companies offer employees time outside of work to voluntarily participate in both religious and non-religious activities. Most importantly, follow established guidelines to avoid religious bias, as you would with any EEO protected class.

## **Intimate conversations**

There are times that employees may cross the line with lewd jokes, talks about close relationships, or sexual comments or questions. These conversations can become uncomfortable at best and are sexual harassment at worse.

Unwanted discussions or comments of a sexual nature are inappropriate at work, and might include things like:

- Asking about sexual fantasies preferences, or history
- Catcalls
- Sexual comments
- Turning work discussions to sexual topics
- Sexual jokes, innuendos or stories

- Personal questions about social or sexual life
- Sexual comments about a person's clothing, anatomy, or looks

Employers must have clear guidelines and policies in place that prevent harassment and unwelcome sexual conversations and advances. The written policy should define sexual and other forms of harassment, explain that such harassment is not tolerated, and encourage victims to file complaints.

Employers should ensure prompt and confidential action will be taken when any charge is raised.

## **Inappropriate social media**

Social media is everywhere these days, and the fact is that most employees probably are using this technology.

Misusing social media can impact the company – even if an employee is using it outside of work hours.

Posting discriminatory, harassing, bullying, threatening, defamatory, or unlawful content, or posting images or photos that they don't have the right to use could impact their job. When employees connect via social media, it can mean that work and personal lives are now interconnected – and can easily lead to misunderstandings and even harm to the company.

While employees generally have the right to post what they want, they do not have the right to harass, discriminate, or harm the company. Misconduct on social media can even lead to dismissal.

One example of such dismissal was a teacher who posted inappropriate comments about her students on [Facebook](#) – saying, "I'm not a teacher - I'm a warden for future criminals!" This and other comments on social media led the school board to fire the teacher. Employees from a wide variety of business backgrounds have faced similar issues.

Once again, having clear policies in place can help prevent many of these issues.

Guidance to employees should ensure that they do not engage in inappropriate or unacceptable conduct, and specify what is considered harassment, obscene, pornographic, or malicious. Such policies should also require that employees do not share confidential information on social channels, and prohibit employees from speaking on behalf of the company without permission.

## **What can companies do?**

Above all else, consistently applying policies is the key to ensuring that your company does not face allegations of unfairness. If solicitation is banned at work, it must apply to the school fundraiser as much as it does to political campaigning.

Establishing appropriate policies and holding training to ensure that all employees understand them is a great way to prevent workplace hostility and discomfort due to these uncomfortable topics.

Encourage employees to report any discrimination or harassment.