

Can You Curb Watercooler Political Banter?

What can you do to keep the political peace in the workplace?

- A. There is nothing you can do. Prohibiting employees from discussing their political views would infringe upon their rights to free speech and is prohibited by the First Amendment.
- B. Employers are able to limit political speech so long as the prohibition is equally applied and does not interfere with employees' right to discuss the terms and conditions of their employment.
- C. Employers can prohibit all political discussions in the workplace – regardless of the topic.
- D. Employers can only prohibit political discussions if those discussions actually cause a disruption in the workplace.



The correct answer is B:

Employers are able to limit political speech so long as the prohibition is equally applied and does not interfere with employees' right to discuss the terms and conditions of their employment.

Explanation

The First Amendment does not apply to private employers or to private workplaces. As a result, private employers are able to adopt policies limiting political speech in the workplace.

That said, there are limits to this ability – namely under the National Labor Relations Act (“NLRA”). The NLRA protects employee’s rights to engage in protected concerted activity, which includes discussing terms and conditions of employment (i.e. wages, working conditions, work schedules, policies, etc.).

Certain types of political speech, namely that which can be linked to a term and/or condition of employment or that which relates to employees’ well-being, are considered protected speech under the NLRA and cannot be restricted by an employer. For example, employer cannot prevent employees from proclaiming support for the candidate plans to increase minimum wage, protect jobs, provide protected leaves of absence.

While the NLRA prevents employers from curbing all political speech in the workplace, employers are able to limit political speech in the workplace to non-work time and in non-work areas without running afoul of the NLRA. However, attempting to implement such a workplace policy is impractical. To enforce the policy, the employer would be required to police employees’ oral and electronic communications and it will likely prove impossible to apply consistently to all employees.

Instead, the employer should look to existing policies (e.g. non-solicitation policies, dress code policies, use of company property policies, employee conduct policies) and use those policies to limit political speech in the workplace. When using these policies in the context of political speech, employers should remember the following:

- **Be consistent.** If the employer allows other non-work related discussions during work time, then the employer cannot prohibit political discussions. In addition, if the employer allows employees to use company property for non-work related things, then the employer cannot prohibit such use for political materials.
- **Be equal.** The employer cannot let its own political views dictate its actions. All employees must be treated equally, regardless of their political leanings.
- **Be neutral.** Many states have laws prohibiting employers from trying to influence employees' political decisions. Do not attempt to sway employees to the employer's political point of view.

Finally, if outbursts and combative discussions are disrupting the workplace, remind employees that regardless of political views, employees are expected to work together in a professional manner to get work done.

For assistance in determining the best strategy to control political speech in your workplace, please contact an HR Professional.