

Employee Political Activity and the National Labor Relations Act

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Under Section 7 of the National Labor Relations Act (NLRA), employees have the right to engage in concerted activity for their mutual aid and protection. Both the National Labor Relations Board and the United States Supreme Court have held that this protection applies not only to activity concerning employees' immediate terms and conditions of employment with their own employer, but also concerted activity that is "in support of employees of employers other than their own" as well as activity to "improve their lot as employees through channels outside the immediate employee-employer relationship." One such channel is political activity.

There are, however, limitations on the protection of political activity under the NLRA. In order for activity to be protected, there must be "a direct nexus between the specific issue that is the subject of the advocacy and a specifically identified employment concern of the participating employees."

Examples of protected political activities would include calling for support for raising the minimum wage, mandatory paid sick leave, or other issues relating to employees' working conditions. In contrast, issues that are unrelated to employees' specific working conditions, such as support for election of a particular candidate or a slate of candidates without reference to specific employment-related issues, would not fall within protected activity.

Employees' concerted economic activity, such as a strike, walkout, or leaving work early to support a political cause, is more limited and is protected only if the activity is directed at an employer who has control over the subject matter of the disputed issue. Thus, employees who leave work without permission to mobilize public sentiment or to urge legislative action would not be protected, as such matters are outside of their employer's control. In addition, a work slowdown is unprotected regardless of the employees' objectives. In sum, unprotected activity includes:

- Political advocacy where the subject has no nexus with a specific employment concern.
- Political advocacy that results in disruption to the workplace operations, where the employer has no control over the outcome of the issue.

Even if particular political activity is protected, the means employed to carry out the activity in the workplace must be appropriate. If the activity takes place on company time or in work areas, the activity is subject to lawful and neutrally applied work rules restrictions, such as solicitation and distribution, political decorations or accessories, or e-mail usage policies.

Employers should take the following preventive steps to control political conduct in the workplace:

- Be sure all employees have received copies of company policies regarding solicitation and distribution, e-mail usage, and political decorations, accessories or clothing;
- Draft these policies to prohibit broad types of actions, rather than targeting narrower activity; and

- Enforce these policies consistently and even-handedly, without regard to the political viewpoint or the topic.

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