

## Employer Strategies For Surviving Election Season

October 7, 2016 | [Employment Lessons, Currents - Employment Law](#)



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Once again, the “silly season” is upon us. Every four years, battle lines are drawn and many employees take sides, touting their preferred candidate’s merits over what they regard as the utterly despicable nature of the other candidate. Fortunately for employers (and everyone else who values their sanity) this *should* be over in about a month. I hesitate only because I lived in Florida during the 2000 election, and if you think things are contentious now – pray the current election cycle doesn’t go into overtime.

### **Free Speech?**

It’s only natural for employees to discuss politics at work. But doing so can be disruptive, and if a political discussion gets out of hand, it can lead to confrontations, allegations of assault, harassment, discrimination or retaliation. Generally, private employers may limit and even prohibit political expression in the workplace, such as discussing candidates or issues, wearing or displaying political signs and paraphernalia. What about free speech, you ask? The First Amendment does not apply to private employers – only the government. Still, there are limits. For one thing, the National Labor Relations Act (NLRA) allows political discussions directly connected to the terms and conditions of employment. Second, some states (such as Colorado, Connecticut, Maryland, New Jersey, New York, Oregon, Texas, Virginia and Washington) have laws that prohibit discrimination against employees based on their political affiliation, or from unduly influencing an employee’s vote through intimidation. Prudent employers should adopt and implement policies advising their employees of what will and will not be tolerated in the workplace during election season. If an employer wants to keep politics separate and apart from the workplace, this is perfectly appropriate – provided of course, that the employer complies with the exclusions outlined by the NLRA, which may be required under state or local law.

### **Election Day Leave**

Another reminder during election season is that most states permit employees to take leave during the workday so they can cast their ballots. The specific laws can vary significantly by state. For instance, some states – but not all – allow voting leave only where the employee would not otherwise have sufficient time to vote before or after their scheduled shift. The majority of states require employees to provide advance notice of voting leave, and also give employers the discretion to determine the specific times during which the employee may be absent from work to vote. With few exceptions, voting leave laws typically allow an employee to be away from work for up to two or three hours during the workday to vote. Similarly, with few exceptions,

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most states require the employer to pay the employee for the time spent on voting leave. Further, a few states also allow employees to take time off not only to vote, but to serve as election officials.

### ***Other Employer Considerations***

Employers seeking to preserve a calm workplace in this silly season – particularly one as heated as this year's – should try to stay above the fray and consider these strategies:

- Adopting a neutral stance about the elections while focusing on the business at hand.
- Review, and if necessary, revise existing policies regarding political expressions at work.
- Remind employees of the policies on voting and political expression.
- Check the requirements of state and local laws regarding elections, and particularly anti-discrimination and voting leave laws, to ensure compliance.
- Educate your front-line supervisors and human resources personnel (especially those tasked with handling leave requests) about the company's policies and the requirements of state and local laws.