



**Lowenstein Sandler's Employee Benefits & Executive Compensation Podcast:  
Just Compensation**

**Episode 41 –  
Politics in the Workplace: Considerations for  
Employers as the Presidential Election  
Approaches**

By [Megan Monson](#), [Amy C. Schwind](#)

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**Megan Monson:** Welcome to the Lowenstein Sandler podcast series. Before we begin, please take a moment to subscribe to our podcast series at [Lowenstein.com/Podcasts](https://www.lowenstein.com/podcasts), or find us on Amazon Music, Apple Podcasts, Audible, iHeartRadio, Spotify, SoundCloud, or YouTube. Now let's take a listen.

**Megan Monson:** Welcome to the latest episode of Just Compensation. I'm Megan Monson, a partner in Lowenstein Sandler's Executive Compensation Employment and Benefits Practice Group. I'm joined by one of my colleagues today, Amy Schwind, who I'll turn it over to introduce herself.

**Amy Schwind:** Hi, I am Amy Schwind, Counsel in Lowenstein's Executive Compensation Employment and Benefits Group.

**Megan Monson:** Today's discussion is a timely topic regarding politics and related issues in the workplace, including political expression, employer policies, and workplace culture. As the presidential election approaches, the potential for political discord to spill into the workplace is exasperated. According to a 2024 Society for Human Resource Management, SHRM, research survey, more than a third of workers say they believe the November election will trigger incivility in the workplace. In this podcast, we'll explore some legal and practical considerations when it comes to addressing or not addressing political expression in and related to the workplace, as well as ways to mitigate risk. As always, if you have questions related to particular circumstances in your workforce or regarding specific legal issues, we encourage you to consult with your legal counsel.

What are some of the risks associated with political discussion in the workplace?

**Amy Schwind:** Yeah, so it can definitely disrupt business operations and reduce employee productivity. According, again, to the SHRM research, workers who rate their workplaces uncivil are three times more likely to say they are dissatisfied with their jobs and twice as likely to say they'll leave their jobs over the next 12 months. It also can create an unpleasant work environment and adversely affect morale. Additionally, it can give rise to potential liability for the employer. Political conversations often focus on protected status like race, sex, religion, national origin, and citizenship, and can potentially provide grounds for claims of harassment, discrimination, or retaliation. Also, employers would want to avoid disciplining employees who are members of protected classes for engaging in political expression if the employer hasn't disciplined employees outside of that protected class for similar activity. There's also the issue of the company choosing to speak out on a topic, how and when it might lend itself to claims from employees. You

addressed that topic, but you didn't publicly address this topic, and that can create potential issues for the employer.

**Megan Monson:** So I think it is really important for employers to be aware of and cognizant of the risks of discussing politics in the workplace and how that can impact the morale and the employee population. So as a general matter, can employers set rules around political expression in the workplace?

**Amy Schwind:** As a starting matter, the First Amendment doesn't prohibit private employers from regulating or even prohibiting entirely political speech in the workplace. The First Amendment generally applies only to government censorship of speech. The federal law, the National Labor Relations Act, applies to both union and non-union employees in non-supervisory positions, and that prohibits employers from restricting concerted activity by these employees. So essentially activity that's taken for their mutual aid or protection regarding the terms and conditions of employment, and that includes topics like compensation, hours, benefits, workload and disciplinary actions. So supporting the election of a candidate as a purely political matter without reference to any employment-related concerns is not protected under NLRB precedent. However, political discussions that relate to non-supervisory employees working conditions would arguably be protected by the federal NLRA and shouldn't be thwarted by employers.

So that's the federal level. At the state level, some states don't protect anything beyond employees' voting rights, but many states have free speech or political activity, or sometimes referred to as off-duty conduct laws that give employees greater rights and protections than under federal law. Under New York law, for example, employers can't threaten or use force or cause harm to an employee in order to induce the employee to vote or to refrain from voting. They can't pay employees in pay envelopes containing a political motto. I don't know how many employers would actually try to do that. They also can't, under New York law, display in the workplace within 90 days of an election any sign that's intended to influence an employee's political opinions or actions.

New York Labor law also prohibits discrimination based on an employee's political activities outside of working hours, off the employer's premises, and without the employer's equipment or other property if those activities are legal. So that includes things like running for a public office, campaigning for a candidate for public office, or participating in political fundraising activities. Also, New York has a law that's sometimes referred to as captive audience meetings law, and under that law, the employer can't require employees to attend employer-sponsored meetings, listen to speech or view communications to communicate the employer's opinion about political matters.

Several other states prohibit some form of political activity discrimination in the private sector. That includes states like California. These laws vary, but the general tenor of them is protection of employees from discrimination or retaliation for lawful political speech or activities outside of working hours that don't interfere with the employee's workplace responsibilities. A few states prohibits discrimination on the basis of political affiliation or belief. There's a difference between political affiliation discrimination and political activity discrimination. It's essentially the difference between refusing to hire someone because they support Red or Blue, for example, versus firing someone because they're running for city council.

This can become a lot more nuanced based on the issue and the applicable law. There was a recent case in California in the Federal District Court where a former employee alleged the employer wrongfully terminated her employment after she posted on Facebook photos of herself at the Capitol on January 6th, 2021, and

positive comments about the events. In that case, the employer argued it terminated her because she violated laws about where demonstrations may take place on Capitol grounds, and the individual alleged she was terminated for a political motive. The court actually allowed the individual's claim of wrongful termination to proceed based on California's specific law. I think that this case was ultimately settled, but it just does go to show how nuanced these matters can be based on the state law at issue.

**Megan Monson:** Are there some specific parameters that an employer might set to regulate political expression in the workplace?

**Amy Schwind:** Yeah, so an employer needs to decide the extent of permissible political expression or activity in their workplace based on their own culture, workforce, business needs, and client and marketplace sensitivities, and also be mindful what's permissible in the states where that employer has employees located. It is probably permissible if the employer wants to prohibit political campaigning during work hours. Also, generally good idea for an employer to have in effect, regardless of politics in the workplace, an electronic communication policy. These policies are really helpful for various reasons, but they can also come into play with political discussion. That employer can remind employees that computer systems and devices are to be used for business-related purposes, and they can also remind employees that computer activity will be closely monitored to determine misuse. Employers can also probably restrict workplace displays of campaign logos or posters. They also could, if they wanted to, institute dress code policies that prohibit employees from wearing political items at work, like buttons, hats, or other campaign paraphernalia. But just to note, under the federal NLRA, non-supervisory employees do have the right to display labor union insignia at work.

Employers should also be mindful of using assets in support of political candidates or parties. They should definitely check first with legal counsel about the legal ramifications of doing so. Employers also should enforce their policies against unlawful discrimination and harassment and workplace violence and disruption. Employers should be clear on what are acceptable behaviors and the consequences for violating them. Discipline is typically permissible if an employee is disrupting the workplace unless it is some sort of protected activity. Employers can also remind employees of the company's social media policy, assuming they have one, and it's a very good thing to have, that commentary on social media can't be harassing or abusive, and also that employees should not be attributing their personal comments to the company. Again, employers need to be mindful to account for activities and communications that are protected by the NLRA for non-supervisory employees.

Employers can also emphasize employees' obligations to engage in civil discourse. So all workplace speech, whether political or otherwise, should be respectful and tolerant of others' views. Also, employers can prohibit employees from using their position within the company to coerce or pressure any other employee to make contributions to or show support for political candidates or causes. Ultimately, the employer is going to want to make sure that they are even-handedly enforcing their policies. Consistency is definitely key here. Supervisors should never use threats of adverse action to influence an employee's vote. That should never happen. Also, it's important for employers to identify a point person or department to receive and investigate any complaints. Employers should know how to handle or who to call if political expression leads to workplace violence. Also, employers might consider offering training to employees and managers on how to handle political discussions in a way that minimizes conflict and fosters an inclusive environment.

**Megan Monson:** I think a lot of the points that you touched on, Amy, really come down to one, having proper policies in place and then two, communicating those policies and really just proper workplace civil discord amongst the employees.

**Amy Schwind:** Absolutely.

**Megan Monson:** Can employers take actions to encourage employees to vote?

**Amy Schwind:** They can take certain actions. So it is possible for employers to share nonpartisan messages via email or bulletins or posters, encouraging employees to vote but not which way to vote. They could also provide employees, if they're so inclined, with information on voter registration. They could provide employees with information on voting locations and times. They could potentially hold a voter registration drive, and also they can, and in some cases they need to, permit employees time off to vote.

**Megan Monson:** So along those lines, are there laws requiring time off to vote?

**Amy Schwind:** There are, yes. So the majority of states protect an employee's right to take time from work to vote in some way. New York law, for example, provides for two hours of paid leave if an employee doesn't have at least four consecutive non-working hours to vote while polls are open.

**Megan Monson:** So I think that's just another instance where employers should be aware of the obligations in their specific states or the states their employees are located to understand what their obligations are and what time off or rules are required to comply with further workforce.

**Amy Schwind:** Exactly.

**Megan Monson:** Thank you so much, Amy, for joining us today. We hope you found today's discussion useful, particularly in the days that lead up to and following the presidential election. We encourage you to consult with counsel if specific questions regarding political expression or workplace conduct arise. Thank you for joining us today. We look forward to having you back for our next episode of Just Compensation.

**Megan Monson:** Thank you for listening to today's episode. Please subscribe to our podcast series at [lowenstein.com/podcasts](https://lowenstein.com/podcasts) or find us on Amazon Music, Apple Podcasts, Audible, iHeartRadio, Spotify, SoundCloud or YouTube. Lowenstein Sandler podcast series is presented by Lowenstein Sandler and cannot be copied or rebroadcast without consent. The information provided is intended for a general audience and is not legal advice or a substitute for the advice of counsel. Prior results do not guarantee a similar outcome. Content reflects the personal views and opinions of the participants. No attorney-client relationship is being created by this podcast and all rights are reserved.