

Chapter 6

Politics at Work

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§ 6.01. Introduction.

According to a recent study by CareerBuilder.com, more than a third of employees report discussing politics in their workplace, and almost a quarter of those have argued and even fought with a coworker, boss or other superior over politics.¹ The study further revealed that the tendency to bring one’s own political affiliations into the workplace also is divided across gender and age lines.² Anyone who has gotten into a heated political discussion at work or been offended by the political comments of others knows that bringing our political affiliations into the workplace — or having someone else’s political affiliations imposed upon us in the workplace — are sensitive issues. Employers and employees alike may wonder where exactly the boundaries lie when politics are brought into the workplace.

While public employees generally are protected by the First Amendment and federal statutes from political coercion and discrimination,

¹ CareerBuilder.com, *Press Release* (March 1, 2012) available at http://www.careerbuilder.com/share/aboutus/pressreleasesdetail.aspx?id=pr681&sd=3%2f1%2f2012&ed=12%2f23%2f2012&siteid=cbpr&sc_cml=cb_pr681_.

² *Id.* The study found that men are more likely than women to talk politics at work, and workers over 55 are more likely than workers under 25 to do the same.

these same laws do not apply to employees of private companies.³ Politics in the private workplace are governed by a number of federal and state laws regarding the power of employers to impose political ideology on their employees and the rights of employees to exert their political views in the workplace. Moreover, because political views often intersect with federally protected classes of employees, federal and state employment discrimination laws also play a role in determining whether and to what extent politics in the workplace are permitted.

While there is no federal law prohibiting employment discrimination on the basis of political affiliation, more and more states are enacting such laws. In California, for example, employers are prohibited from making, adopting, or enforcing any rule, regulation or policy preventing employees from participating in politics or running for office, controlling employees' political affiliation or activities, or coercing employees to follow or refrain from any particular course or line of political action or activity.⁴ Missouri has a similar law protecting the political affiliations and activities of employees.⁵ In Washington state, no employer or labor organization may discriminate against an employee because that employee supports or opposes a political party, candidate, or otherwise.⁶

Other states have gone a step further to restrict an employer's ability to impose its own political leanings on an employee. For example, in New Jersey, employers may not require employees to attend mandatory meetings designed to communicate the employer's opinion about political matters.⁷ Such coercive behavior also is prohibited by California law.⁸ In Oregon, employers may not use "undue influence" — such as the threat of loss of employment — to induce an employee to vote a certain way, contribute to

³ Allie Robbins, "Captive Audience Meetings: Employer Speech vs. Employee Choice," 36 *Ohio N.U. L. Rev.* 591, 591-92 (2010).

⁴ Cal. Labor Code § 1101-1102.

⁵ Mo. Ann. Stat. § 115.637.

⁶ RCW 42.17.680.

⁷ N.J. Stat. Ann. § 34:19-10.

⁸ Cal. Lab. Code § 1102

a particular candidate, *etc.*⁹ Following the United States Supreme Court's ruling in *Citizens United*, many more state laws regulating corporate influence in politics can be expected.¹⁰

This chapter will review the various laws that impact how politics may be regulated in the workplace. This chapter first focuses on the laws applicable to employers in raising money for political candidates and issues.¹¹ Next, this chapter reviews how federal labor laws place restrictions on employers taking adverse action against employees for the exercise of political activity or speech. Finally, this chapter reviews the various state laws that were created to fill the federal void of direct protection of political activity.

§ 6.02. Campaign Finance Laws and Employment.

[1] — The Federal Election Campaign Act.

The Federal Election Campaign Act (FECA) regulates financial contributions of corporations and labor organizations.¹² Under FECA, corporations and labor organizations may not directly engage in federal election activities by using corporate or labor organization resources or facilities to engage in fundraising activities.¹³ For example, corporations and labor organizations may not direct employees to plan, organize or carry out fundraising projects as part of their work responsibilities using corporate or labor organization resources.¹⁴

⁹ Ore. Rev. Stat. 260.665.

¹⁰ See Robert M. Stern, *Sunlight State by State After Citizens United: How State Legislation Has Responded to Citizens United* 4-6, available at <http://www.citizen.org/documents/sunlight-state-by-state-report.pdf>.

¹¹ Raising money has played an increasingly important role in politics. See, e.g., Kenneth Weine, *The Flow of Money in Congressional Elections* (January 1, 1998), available at http://www.brennancenter.org/content/resource/the_flow_of_money_in_congressional_elections/; there are numerous websites designed to allow the user to track the contributions to specific candidates. See, e.g., *Money in State Politics*, <http://www.followthemoney.org/> (last accessed Sept. 9, 2012).

¹² 2 U.S.C. § 441b(b).

¹³ 29 C.F.R. § 114.2(b) (1) and (2) (f).

¹⁴ 29 C.F.R. § 114.2(2) (f).