



## Newsletter Article

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### POLITICAL DISCUSSIONS IN THE WORKPLACE: A VOLATILE COMBINATION

By Thomas A Cox Jr

#### ABOUT THE AUTHOR

**Thomas Cox Jr** is Labor and Employment Attorney for the Atlanta Office of Fisher and Phillips LLP, a national law firm representing management in labor and employment matters across the country. Thomas represents corporate employers in all facets of labor and employment litigation defense, counseling on Affirmative Action and EEO Compliance and corporate training.

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*It is difficult to turn on the television or log onto social media without hearing about Campaign 2016. If you own a business or work as a human resources professional, it is equally clear that your employees are also being inundated with information regarding Campaign 2016. There is also one other certainty – your employees will generally not check their political opinions at the door when they come to work.*

#### Political Expression at Work

One of the commonly accepted rules of proper corporate business etiquette is that political discussions in the workplace are generally disfavored. With Campaign 2016 already dominating the daily news cycle and social media, along with a highly fragmented electorate, what can employers do to manage political discussions and political activities in the workplace? Alternatively, don't we have the right to express our views in the workplace – as American citizens?

#### At Will Employment

In most states, workers are employed at the will of the employer. In states that recognize the at-will employment doctrine, employers may discharge an employee at any time and for any reason, so long as the decision is not based on unlawful discrimination based on a legally protected status. Engaging in political activity or expression in the workplace is not currently viewed as a legally protected category or activity in the workplace.

#### The First Amendment and Private Sector Employment

The First Amendment provides no protection for private sector employees engaged in political activity or expression in the workplace. The First Amendment specifically provides that Congress shall make no law abridging the freedom of speech or the right of the people to peaceably assemble and petition the government for redress. Employees in the private sector generally, with a few exceptions, have no First Amendment right to express political views in the workplace.



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## Where Do We Go from Here?

But what's the harm with a little political talk in the workplace? To sum it up – potentially plenty. Because political issues can and often do stir up intense emotions, potentially divisive topics, such as race, national origin, immigration status, citizenship, and religion, often end up forming the basis of political discussions. Such topics could lead to allegations of discrimination, bullying and the creation of a hostile work environment.

Employers should monitor the workforce for this type of unwanted behavior and review their company policies and procedures related to harassment, bullying and hostile work environment, as well as all policies requiring employers to provide a safe workplace. Any allegation of bullying and harassment should also be swiftly and thoroughly investigated. Finally, because the majority of states require employers to allow employees time off to vote on Election Day, some additional advance planning may be required here. Now is the time for management to prepare for the possible workplace disruption generated by - - Campaign 2016.

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