



Case Analysis by
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NewsFlash

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Politics in the Workplace?

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The elections are on! Who will the candidates be? What do they stand for? Who has the momentum? These are all thought-provoking questions, fanned by constant media barrage and the sidewalk expert.

Is there room for this commentary in the workplace? What are the rights of employees and obligations of employers?

Recently, the American Management Association conducted a survey of 701 employees (the *2008 Political Discussion in the Workplace Study*) and determined that a significant percentage of employees are uncomfortable with political discussion in the workplace – about one-fourth were "somewhat uncomfortable" and over 12% were "extremely uncomfortable." The principal issues are easily understood – *Is the discussion done in a fair way? Do employees respect each other's opinions?* As one respondent wrote, "Politics, like religion, evokes strong emotions in many people. I refuse to discuss politics at work in any great detail since most political conversations are not usually discussion but rather an attempt to sway a vote."

The First Amendment does not apply to private employers, so political talk could, in theory, be banned at work. Doing so, however, is probably impractical and counterproductive. The main goal should be, instead, to infuse common sense and tact among co-workers. Not surprisingly, survey participants were even *less* comfortable talking about politics *with their bosses* (about 40% felt "uncomfortable"). Without question, possible reprisal and favoritism are concerns.

The old adage is that "politics and religion should not be dinner table talk." Along with following this nicety of decorum, Texas employers also need to be aware of the following:

- (1) State law prohibits retaliation against an employee based on the way the person voted or his or her refusal to divulge for whom she/he voted. *See* TEX. ELEC. CODE §276.001 (a) (2). This is a third-degree felony, punishable by imprisonment of no more than ten years but not less than two years; a fine up to \$ 10,000 could be assessed also. *See id.* & TEX. PENAL CODE §12.34.



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- (2) If the polls are *not* open for *two consecutive* hours when the employee is not working, the employer must allow the employee to take time to vote – without deducting pay for that time off. A violation or retaliation against an employee of this law results in a Class C misdemeanor (possible \$ 500 fine). TEX. ELEC. CODE §276.004 & TEX. PENAL CODE §12.23.
- (3) State law also protects an employee if he/she needs to be absent from work to attend a precinct convention in which he/she is eligible to participate, or a county, district, or state political convention. The time off does not have to be compensated but an employer may not otherwise reduce an employee's wages or benefits or threaten to do so, if the employee engages in these political activities. Violating this statute is also a Class C misdemeanor. *See* TEX. ELECT. CODE §161.007.

It is also a felony for a corporation, labor organization or political committee to use or threaten to use physical force, job discrimination, or financial reprisal to obtain money or any other thing of value to be used to influence an election result or to assist an officeholder. TEX. ELECT. CODE §253.102.

If we keep these regulatory requirements in mind, *along with using common sense*, we may survive the current election process, *even if* our particular candidate of choice is not successful.

This article is not intended as legal advice to a specific problem or issue. If you have a question about employment law, please contact the Powers & Frost attorney with whom you work or Andrea Johnson, Partner, Head of Employment and Commercial Litigation Section.

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