

# Employment Law Corner

## Monthly Report



FOLEY & FOLEY<sup>PC</sup>  
ATTORNEYS AT LAW

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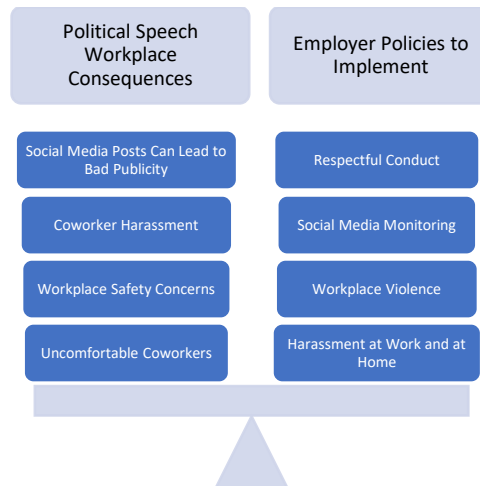
### Voting Ends, Arguing Continues: Workplace Speech

The recent election has not ended the friction throughout the country, including conflicts in the workplace. Up to 42% of U.S. workers have had political disagreements at work, contributing to workplace discord, increased stress on workers, and reduced productivity.

Halting all political speech in its tracks is not possible, particularly after the long campaign and protracted election outcome we have experienced. But it is not too late to limit speech and stop disagreements at work. The key to protect your business and workers is using your well-drafted policies before speech goes too far.

#### November Updates

1. Election Dynamics in the Workplace
2. Harassing Speech and Out of Work Conduct
3. What to Do



#### What to Do:

It is never too late to repair workplace culture. Consider enacting policies that require civility and prohibit harassing speech, as well as inflammatory speech that could result in violence. Have policies already? Dust them off and disseminate. Setting clear guidelines on acceptable behavior at work is a best practice, and if you do implement a political speech policy, make sure that it is neutral, and does not unduly target one particular viewpoint. After allowing the free exchange of ideas to promote creativity for several years, [Google](#) created a monster. They established [Community Guidelines](#) for employees when discussing non-work-related topics, stressing thoughtful communication and the mandate to have a safe, productive and inclusive work environment. Changing times may require a change in policy. If Google did it with over 100,000 employees, you can do it too.

*\* There are very limited exceptions to that under state law in Connecticut and Utah, which prohibit discrimination based on political affiliation, and in the following states, based on engaging in political activities: California, Colorado, Louisiana, Minnesota, Missouri, Nebraska, Nevada, South Carolina, and West Virginia.*

### Political Beliefs:

An employee's personal political beliefs are not a protected class under Federal law: private sector employers are permitted to restrict political expression during work and can make employment decisions based on political beliefs.\* Employers have the ability to draw the line at prohibiting expression of political beliefs during work time, and allow only respectful conversations during break or other non-working time. Political speech can make other coworkers uncomfortable and raise interpersonal issues when there is disagreement. Utilizing policy or the employee handbook and ensuring managers employ these provisions will lead to a healthier work culture.

### What About Free Speech?

The First Amendment protects persons from the Government interfering in your speech. There is no right to "free speech" in the private workplace. Private businesses and employers are permitted to censure speech. The exception is protected concerted activity under the National Labor Relations Act or Section 7 rights which cannot be restricted at any workplace.

### Section 7 NLRA Activity:

The NLRA prohibits employers from disciplining employees who complain about their workplace, whether at the workplace or on social media. Complaints about the workplace are considered protected concerted activity. Employees are permitted to complain to seek change at their workplace and for many years that included profane, offensive speech. (The [NLRB finally](#) saw the light and rolled that standard back.)

### Harassing Speech and Conduct Outside of Work:

Monitoring employee conduct and speech outside of the workplace can be necessary to ensure that employees are not posting insensitive, inappropriate, harassing posts and are not making your business look bad. Social media posts or statements that reflect poorly on a company can be addressed through employer's discipline process—this is where a solid policy helps. It is not uncommon for employees to be disciplined for discriminatory political posts that violate their employer's anti-discrimination policy. Just because your employee is not posting inappropriate views at work does not mean that discipline for violating your conduct policies is forbidden. You can do it, we can help.

### Workplace Violence:

Unfortunately, divided opinions in the workplace may lead to workplace violence. Employers must provide a workplace free from threats of serious bodily injury under the OSHA General Duty Clause. Workplace violence includes threats, horseplay, physical violence, taunting, and intimidating behavior, which can all lead to workplace safety issues. Employers must have conduct standards in place to ensure the safety of their employees.

If your workplace is getting too distracted by current events or internal drama, we can help.

### Workplace Wellness

Getting your workplace ready for winter will put your mind—and your employees' minds—at ease. [Contact us](#) to purchase the [COVID-19 Stay Healthy Aide Kit](#) and free up some time and head space. You will need both to get through the holidays this year.

### Kaitlyn MacLeod

Meet our Associate Kaitlyn MacLeod who focuses her practice on protecting employers' interests by advising clients on day-to-day human resources issues and providing counsel on compliance with Federal, State, and local employment law. Kaitlyn prepares employer handbooks, settlement agreements, employment agreements, and other employer policies.



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