

CONNECTICUT

EMPLOYMENT LAW LETTER

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Addressing political activism when tempers flare in workplace

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The presidential election may be over, but nationwide civil unrest has spilled into 2021, which is already shaping up to be a year filled with contentious political debate. Here are some tips for employers to help tamp down the temperature when employees engage in divisive political talk and action at work.

Challenging times for employers

Political discussions and activities can create a number of difficult issues for employers. Many businesses try to avoid taking a stance on partisan issues. Others may decide to support a particular position.

Consider what happens when an employee disrupts the company's plans by advocating at work for a position the employer either opposes or doesn't want to get involved in. The conflict can raise issues involving freedom of speech.

Dealing with political activist employee

Suppose the managers of a Connecticut retail business have carefully avoided taking sides in an ongoing political debate. An employee feels strongly about the issue, however, and has been wearing a shirt to work advocating for his position. The shirt has caused a few scenes with customers who disagree with the employee's position, and other customers have become uncomfortable because of the passionate debates the shirt has ignited.

Can the employer do anything? As with most questions, the answer is, it depends. State laws protecting political speech (such as wearing a shirt expressing a position) differ.

What Connecticut law says

Under Connecticut General Statutes § 31-51q, an employer is liable if it disciplines or fires an employee because she exercised her First Amendment rights (such as free speech) unless her actions materially (or significantly) interfered with her job performance or the relationship between the two parties. Even worse, an employer can be liable for punitive damages and the employee's attorneys' fees.

In our retail business example, the employee's shirt seemed to have interfered with his performance. It caused him to get into arguments with customers. Not only is he *not* working when he's arguing with customers, but he is also costing the employer money by upsetting the patrons (including third parties who are upset by the confrontation).

At that point, the employer could probably instruct the employee not to wear the shirt and begin documenting the disciplinary violations if he fails to comply. (If your employee handbook has a dress code, the employee is

probably violating it, too, in addition to the supervisor's instructions to stop wearing the shirt anymore.)

Conversely, if an employee who works from home wears the same shirt and you happen to notice it on a Zoom meeting one day, but no one cares, taking action against the employee would be unwise.

Proceed with caution

Proceed with extreme caution when you're responding to political and free-speech issues in the workplace. Nevertheless, at least in Connecticut, you have the ability to intervene if it's clear the employee's actions are affecting performance or the employment relationship. Even then, however, the issues are complex and potentially problematic if not handled with care.

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