

The Legal Strategist

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TEXAS ESOTERIC FACTS

As we are more and more inundated by "fake news," detestable political blogs, unending social media posts and out and out "Derangement Syndromes," what can you, as an employer, do to curb this activity that threatens loss of productivity, failing attention to customer service and employees focus decline as employees advocate their political opinions rather than concentrating on their employment. Private employers often can reassert control by recognizing the misconception that employees have a constitutional right to talk "politics" at the workplace.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in our newsletter, which can be viewed on [The Legal Strategist](#) tab of my web site, please contact my office at 713.526.1883.

Scott Barrett

When Charles Whitman began his shooting rampage at the University of Texas in 1966, a lot of locals grabbed their rifles and started shooting back. They kept him pinned down until the police could sneak up the tower and kill him.

FEATURE TOPIC: DO EMPLOYEES HAVE "POLITICAL FREE SPEECH" AT WORK?

NO. Employees, as well as many employers, commonly but mistakenly believe that the First Amendment to the U.S. Constitution guarantees "freedom of speech" at work. In fact, the First Amendment applies only to government action and neither limits the rights of private employers to regulate employees' communications nor provides any constitutional right for those workers to express thoughts or opinions at work. As a result, there is no constitutionally protected right of "free speech" in the offices and factories of private employers. Although employees may be entitled to express their views freely on their own time or on a soapbox in the park, they have no such wide-ranging constitutional rights at work. This includes the use of social media in the workplace. Absent rights provided by one of the limited exceptions discussed below, there are no legal protections for political activities in the workplace, so private employers generally may refuse to hire, adjust pay/benefits and even discharge "at will" employees because of their political views. In short, "political discrimination" often is not unlawful discrimination.

There are two general exceptions to the principle that private employers may legally implement a "no free speech or political activity in the workplace" policy.

First, laws in some states provide protections for political activities. Texas law prohibits employers from taking adverse action against an employee based on who the employee voted for or for refusing to reveal how he or she voted. Employers must allow employees to take leave to attend a local or state political convention and cannot threaten or retaliate against the employee for such attendance.

Second, and perhaps most importantly, the National Labor Relations Act (NLRA) restricts an employer's right to limit non-supervisory employees' communications about wages, hours and other terms or conditions of employment. These restrictions may apply not only when the protected communications occur in the workplace during working times but also when they occur outside the workplace during non-working times. In addition, the NLRA restrictions protect non-union employees as well as union-represented employees.

However, the NLRA's protections are limited to political topics with a nexus to specific employment-related issues; employers may lawfully restrict workplace communications and activities that are purely political in nature. This would include, for example, communications generally touting a political party or candidate; displaying or distributing a "Vote for Smith" poster or campaign button; and wearing a T-shirt that seeks support for a proposed law to increase the speed limit. Although those communications and activities clearly are political in nature, they lack the connection to employment-related issues required to bring them within the scope of the NLRA's protections.

Bottom line for employers: if you have employees in Texas (an At-Will state) who are expressing political views you find offensive, corrupt workplace harmony, and do not have a nexus to specific employment-related issues, you would not be in violation of the law for terminating said employee solely based upon their political speech.

If you would like more information on this or any other topic relating to the employers rights as to the behavior of their employees, please contact [Scott Barrett](#) to set up a consultation.