

POLITICS IN THE WORKPLACE

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South Carolina School Boards Association | 2018 SCHOOL LAW CONFERENCE



IN THE NEWS



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- “Anybody that don’t stand up for the anthem oughta be out of the country. Period. What got ‘em where they’re at? The United States.”

- Richard Petty



3

THE PROBLEM

- According to a recent survey from BetterWorks
 - 50% have witnessed a political conversation turn into an argument at work (63% of millennials saying the same)
 - 30% say they are less productive since the election due to political environment
- Public relations issues when employees speak out
- Managers less likely to promote individuals of a different political party

4

THE CHALLENGE

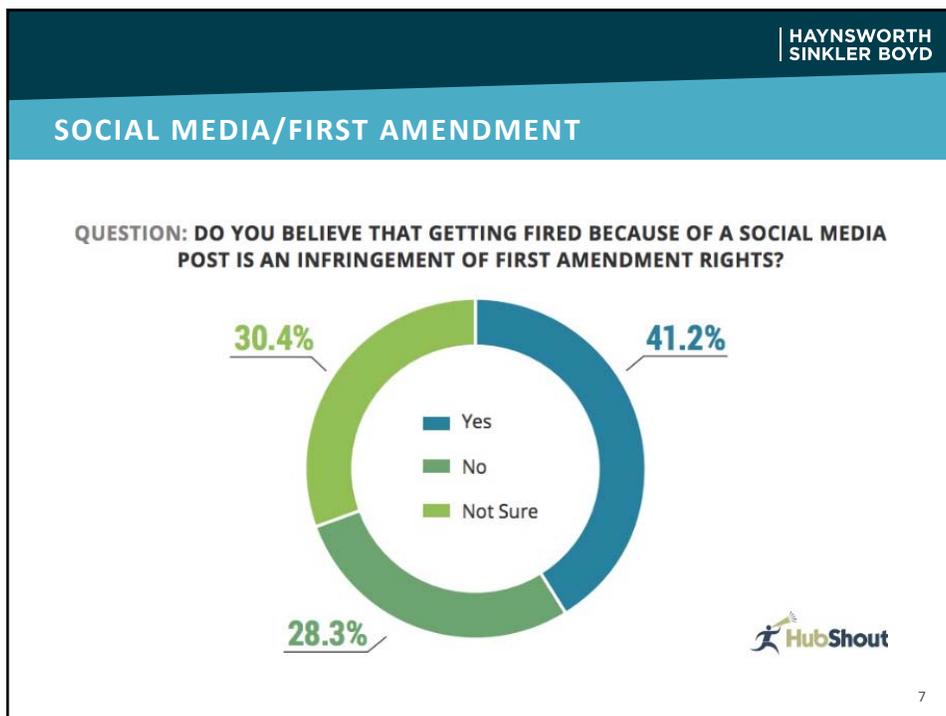
- Foster a cooperative, productive, inclusive work atmosphere/environment, and that does not discourage workers from having their own opinions and does not create a workplace that feels more like a dictatorship than a democracy

5

FIRST AMENDMENT

- “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”
 - For public employees, have limited protection from retaliation for exercising certain First Amendment rights of a “public concern”

6



- HAYNSWORTH
SINKLER BOYD
- ### FIRST AMENDMENT
- *Pickering v. Board of Education*
 - "the interests of the employee as a citizen, in commenting on matters of public concern" must be balanced against "the interest of the State as an employer, in promoting the efficiency of the public services it performs through its employees."
 - Citizen speech v. employee speech
- 8

FIRST AMENDMENT

- Public concern
 - Allocation of school funds and informing taxpayers on real reasons/uses of tax revenues
 - Testifying before state legislature
 - Statements concerning school district's racially discriminatory policies
 - Speech criticizing government waste, not as employee, but as concerned citizen
 - The manner in which police and firefighters perform on certain occasions
 - Adequacy of funding for emergency services

9

DISCRIMINATION?

- Political Affiliation is not a protected class under Title VII/IX. In other words, political discrimination is often not illegal discrimination.
 - Interestingly some states do – do you think it should?
- However, sometimes political conversations can cross the line into religious, racial, national origin, LGBT conversations, which could be discrimination or harassment
 - i.e., my manager discriminates against Hispanic Americans because of his comments about Trump's executive orders on immigration

10

SOUTH CAROLINA LAW

- S.C. Code Ann. Section 16-17-560
 - It is unlawful for a person to assault or intimidate a citizen, discharge a citizen from employment or occupation, or eject a citizen from a rented house, land, or other property because of political opinions or the exercise of political rights and privileges guaranteed to every citizen by the Constitution and laws of the United States or by the Constitution and laws of this State.
- Criminal statute, but could use to invoke public policy exception to at-will employment doctrine.

11

DAY-TO-DAY HR ISSUES

- Heated break room conversations
- Social media rants
- General distractions/lack of productivity
 - According to the Washington Post, about 1/3 of workers think their colleagues talk more about politics than work
- Constituent complaints about employee political views
- Lack of collaboration among those whose political views differ

12

COMPANY POLICIES

- 72% of HR professionals indicate their organizations discouraged political discussions in the workplace
- Policies need to strike a balance
 - Strong enough to justify discipline of employees in the necessary situations
 - Not overly broad (might implicate First Amendment)
 - Must follow/enforce what you write

13

POLITICS IN THE WORKPLACE POLICY

- Not required or necessary, but may be helpful
- Avoid outright bans on political conversations in the workplace
 - Difficult to enforce
 - Make employees feel like they are being overly policed
 - May run afoul of the First Amendment (matters of public concern).

14

SOCIAL MEDIA POLICY

- Most important policy for companies to enact/review right now
- NLRB has taken a keen interest in these policies in recent years
- Things to be sure to include:
 - Reminder that anti-discrimination and other company policies apply to your activities outside of work and online
 - Avoid statements/activity that could shed negative light on company values
 - For company's own account, limit access only to authorized individuals



15

CODE OF CONDUCT POLICY

- Refrain from overt partisanship
- Avoid personal attacks and inflammatory rhetoric
- Civility and respect
- Encourage employees to focus on work, not politics
- Policy applies to activities outside of the office as well

16

FINAL THOUGHTS

- Review and revise policies as necessary
- Discipline where necessary to encourage productivity and focus on work
- Counsel employees who are disciplined on the appropriate behavior
- Consider termination in egregious/serious situations that involve public relations issue for the company
- Emphasize mutual respect!

17



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