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Employee Politics, Social Media Posts, and Other Distractions

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Atlanta, Boston, Chicago, Dallas, Denver, Detroit, Houston, Los Angeles, Miami, Minneapolis, New York, Philadelphia, Phoenix, Portland, Raleigh, San Diego, Seattle, St. Louis, Tampa, Washington, DC, Wichita

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Agenda

- Free Speech
- Political Activity
- EEO Standards
- NLRA Standards
- Case Studies
- Best Practices



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Why this topic, why now?

- Political discourse on social media, employee and customer interactions, and on work apparel, creating legal, operational, and reputational risks for employers.
- Employers report concern about managing divisive political and social beliefs (e.g., in the run-up to the 2024 election).
- Focus: protect employee rights, maintain productivity, and ensure consistent, lawful policy enforcement.



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The First Amendment Does Not Apply

The First Amendment restricts government—not private employers—so there is no constitutional right to political speech in private workplaces.

Private employers generally may regulate political expression at work, subject to federal, state, and local limits (e.g., NLRA, anti-discrimination, state “political activity” protections).



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Political Activity Protections

California Labor Code §§ 1101 and 1102

- May not prevent employees from **engaging in politics** or becoming **candidates** for public office.
- May not control or direct **political activities or affiliations** of employees.
- May not threaten termination to **coerce political action** or activity.

These protections do not grant unfettered rights to engage in political expression on-premises or during work if policies are neutrally applied and content-neutral.



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California Captive Audience Law - Enjoined

SB 399, effective 1/1/25, prohibited discipline or retaliation against employees who refuse to attend meetings about **unionization, religious, or political topics**.

A federal district court issued a preliminary injunction in September 2025, **blocking enforcement**.



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Lawful Off Duty Conduct - Generally

- California Labor Code §§ 96(k) & 98.6 prohibit retaliation for lawful conduct occurring during nonworking hours away from workplace.



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Off-Duty Political Activity

Examples of off duty political activity

- Attending political rally
- Volunteering for a campaign
- Attending a protest event
- Running for an office
- Posting political speech on social media



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EEO/Harassment Overlay (Title VII and State EEO)

- Political speech not a protected category
- Discussions about race, sex, religion, national origin, sexual orientation, gender identity, disability, age, etc. can trigger discrimination, harassment, or retaliation risks.
- EEOC: Conduct must be because of a protected characteristic; political disagreements alone are not harassment.
- 2024 Supreme Court decision in *Muldrow* may ease plaintiffs' burden for Title VII discrimination, increasing litigation risk if adverse actions are linked to protected traits. *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024).

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Religious Expression and Accommodations

- CA and federal law requires reasonable accommodation of sincerely held religious beliefs
 - Use an interactive process and evaluate the impact on coworkers and operations; balance with anti-harassment obligations.
- Social/political philosophies are not religious beliefs.



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NLRA Implications

- Q: Does the conduct constitute "protected concerted activity?"
- May be concerted if "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself", OR
- Circumstances where individual employees seek to initiate or to induce or to prepare for group action," OR
- Where an individual employee brings "truly group complaints to management's attention"



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NLRA Implications

Q: Is it for "Mutual Aid or Protection?"

- Aimed at improving "terms and conditions of employment"
- Traditional workplace issues, including wages, benefits, hours, work rules, and supervision
- AND broad social or political issues **that have an impact in the workplace**



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NLRA Implications

Employer Policies and PCA –Generally

- Rule is presumptively unlawful if it “could reasonably be interpreted” to chill Section 7 activity.
- Even if a noncoercive interpretation is equally reasonable.
- The employer may rebut the presumption if the rule advances a legitimate and substantial business interest and a more narrowly tailored rule would not be sufficient.

* Stericycle, Inc., 372 NLRB No. 113 (2023)



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NLRA Implications

Relevant Employer Policies

- Civility and non-disparagement
- Confidentiality and non-disclosure
- Recordings and photographs in the workplace
- Leaving work area without permission
- Rules prohibiting political activity
- Uniform/attire requirements and prohibitions



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NLRA Implications

Personal Expression – Insignia

- Union insignia
- Insignia unrelated to union issues
- Interference is presumptively unlawful, unless compelling “special circumstances”
 - Safety – Discipline - Production
- Buttons, pins, stickers, shirts, hats
- Think “Black Lives Matter” and “ICE OUT” logos




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NLRA Implications

Forms of Personal Expression


- Protests or Rallies may be PCA
 - Must be a close nexus to political speech and employment
 - Must be related to terms and conditions of employment under the employer's control
 - State law?
 - Examples: Minimum wage, Anti-Deportation, Israel/Hamas



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NLRA Implications


- The Board has held rules prohibiting "political" activity/expressions are unlawfully overbroad.
 - prohibitions against "discussing politics" in the workplace and using the employer's name "for political purposes"
 - rule prohibiting "shirts with commercial or political advertisements"
 - policy that prohibits employees from wearing pins or buttons that advocate for a "political, religious, or personal issue"



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NLRA Implications

- The NLRB found an employer unlawfully prohibited employees from wearing "No on Prop 32" buttons relating to state legislation that would have prohibited the deduction "from an employee's wages, earnings, or compensation any amount of money to be used for political purposes." [buttons were not purely political or so remotely connected to the concerns of employees as employees]
- In contrast, the Board has held "purely political tract[s]" were sufficiently removed from the employees' interests as employees so as to remove such button distribution from protection under the mutual aid or protection clause" of the NLRA.



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**Policy Architecture:
What “Good” Looks Like**

Clarify scope: workplace civility, anti-harassment, non-discrimination, solicitation/distribution, dress code, social media, voting leave, and complaint procedures.

Draft narrowly and neutrally; avoid content-based distinctions; align with NLRRA policy standards and recent NLRB decisions.

Train managers on issue-spotting, de-escalation, and lawful responses; manage by conduct, not viewpoint.



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Workplace Political Activity

Employer can control:

- Attendance, tardiness
- Following business-related policies and procedures
- Performing job duties





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Workplace Political Activity

Employer can control:

- Disruptions of operations (mostly)
- Dress code (mostly)
- Certain non-work related / employment-related communications and solicitation (political speech, displays)



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California Playbook: Practical Guardrails

- Respect off-duty political activity while enforcing neutral, content-agnostic workplace rules; heightened risk if discipline targets political viewpoint rather than conduct.
- Avoid policies that could chill Section 7 rights; ensure solicitation/distribution and email/communication rules follow NLRA parameters.
- Train supervisors on California's political activity protections and how to separate content from conduct in performance management.



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Scenario 1: Controversial Employee Social Post

A co-worker complains that Sally Smith posted on X that Charlie Kirk deserved to be assassinated and that sometimes "unaliving" people is the only way to change society for the better.



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Scenario 1: Controversial Employee Social Post

- Assess how the post was obtained to avoid violating social media privacy laws; confirm it is not protected concerted activity.
- Evaluate whether the post implicates protected characteristics or creates hostile environment concerns; enforce policies consistently.
- If discipline is warranted, ground it in policy-violating conduct and document neutrally.



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Scenario 2: Political Debate Escalates at Work

In the break room, a group of maintenance workers frequently cheer when viewing videos of ICE raids. Two assistants from the Admin Department have been confronting them and engaging in heated debates.



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Scenario 2: Political Debate Escalates at Work

- Intervene to stop disruption and reset expectations under civility and anti-harassment policies; avoid content-based policing.
- Confirm whether Section 7 applies (nexus to working conditions); if not, apply neutral rules on worktime and work areas.
- Coach or discipline based on conduct, not viewpoint; document.

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Scenario 3: Political Apparel on the Floor

A group of employees begins wearing "GTFO ICE" buttons. Another group often wears shirts with images of Donald Trump and MAGA.



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Scenario 3: Political Apparel on the Floor

- Apply neutral dress code; if messages relate to working conditions, assess “special circumstances” before restricting.
- If apparel is purely political and policy prohibits all slogans, enforce uniformly.
- Consider whether past complaints tie the message to workplace concerns, potentially triggering NLRA protection.

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Scenario 4: Off-duty Rally and Public Controversy

California law protects political activity; adverse action for off-duty rally participation is risky unless clear policy-violating conduct occurs. Evaluate reputational risk versus legal exposure; consider non-disciplinary responses and reaffirm policies.



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Communications and Leadership



Pre-emptively set ground rules for respectful engagement; remind teams of policies ahead of elections or high-salience events.



Guide managers to avoid sharing personal politics, watch team climate, and ground interventions in company values and policies.

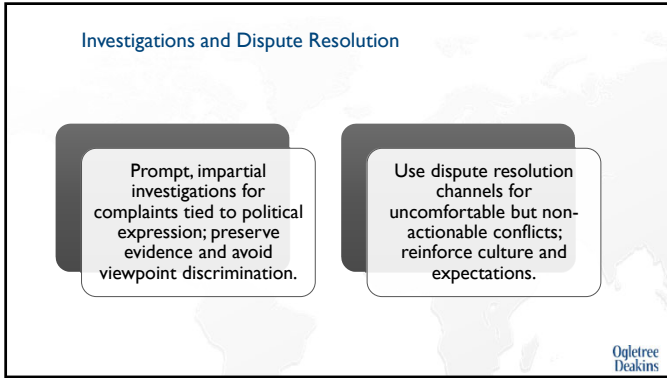


Make a clear HR/legal contact path and de-escalation protocol available.


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Investigations and Dispute Resolution

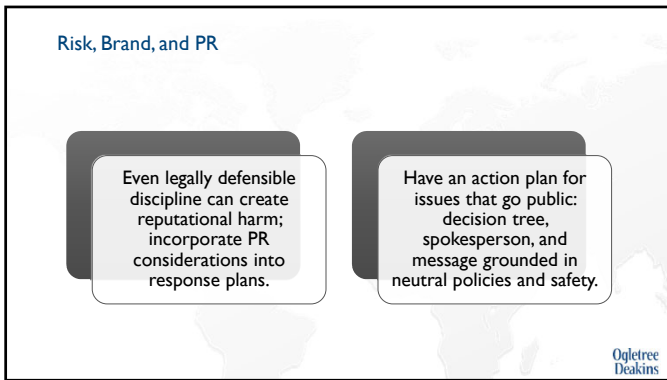


- Prompt, impartial investigations for complaints tied to political expression; preserve evidence and avoid viewpoint discrimination.
- Use dispute resolution channels for uncomfortable but non-actionable conflicts; reinforce culture and expectations.




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Risk, Brand, and PR

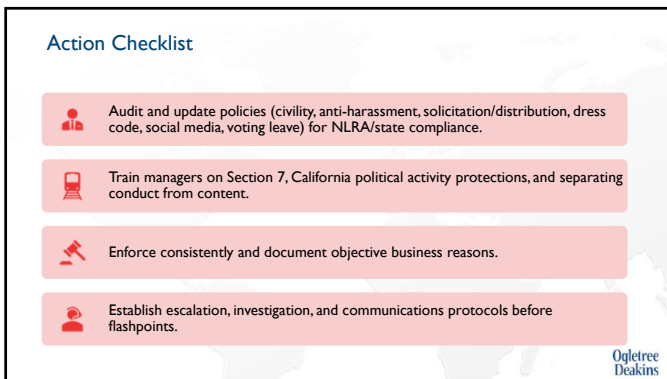






- Even legally defensible discipline can create reputational harm; incorporate PR considerations into response plans.
- Have an action plan for issues that go public: decision tree, spokesperson, and message grounded in neutral policies and safety.




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Action Checklist



-  Audit and update policies (civility, anti-harassment, solicitation/distribution, dress code, social media, voting leave) for NLRA/state compliance.
-  Train managers on Section 7, California political activity protections, and separating conduct from content.
-  Enforce consistently and document objective business reasons.
-  Establish escalation, investigation, and communications protocols before flashpoints.



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Thank you!

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