



EPSTEIN BECKER GREEN

Top 10 Tips for Addressing Social and Political Issues in the Workplace

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1. Develop Policy Framework

- Prepare written policy that addresses communication about social and political issues
 - Scope of policy
 - Consider ability to discipline misconduct inside vs. outside the workplace
 - Consider whether conduct occurs during working time or not, even if in the workplace
 - Consider legal limitations
 - Lawful off duty conduct laws may restrict the reach of employers
 - Ensure policy is compliant with NLRA
- Review existing policies that dictate behavioral expectations and incorporate by reference
 - E.g., Code of Conduct, anti-discrimination/harassment
- Consider resources for employees to assist in compliance
 - Training for handling incidents involving colleagues/customers
 - EAP or other resources to provide support

2. Avoid Unlawfully Overbroad Language

- Ensure that written policy does not contain unlawfully overbroad language
 - Explicitly restricting protected concerted activity (e.g., banning union activity)
 - Even if policy does not explicitly prohibit protected concerted activity, a rule might be unlawful if:
 - Employees would reasonably construe rule's language to prohibited protected concerted activity; or
 - Applying rule to restrict exercise of protected concerted activities
 - Rules frequently litigated include
 - Confidentiality
 - Professionalism
 - Trademark
 - Photography/recording
 - Media contacts
- Include exceptions for statutorily protected activities
- Consider how individuals will perceive policy if published or made an exhibit at a hearing or trial

3. Train and Provide Reminders Regularly

- Train employees so they have a clear understanding of policies and expectations for conduct
- Periodically remind employees about policy so topics remain top of mind
- Provide practical guidance to help employees understand policies in application
- Ensure consistent message around the importance of topics, from senior management down

4. Reserve Right to Monitor

- Reserve right to monitor workplace and online activities for policy violations
- Expressly disclaim any expectation of privacy in the workplace or company-provided electronic communications equipment
- Be aware of laws prohibiting or limiting surveillance
 - National Labor Relations Act
 - State laws
 - Common law expectation of privacy
- Provide notice of monitoring
 - Providing notice helps eliminate any expectation of privacy
 - Some state laws, such as in New York, require employers to notify employees when monitoring electronic communications
- Consider monitoring only upon notice of policy violations

5. Evaluate Various Sources of Scrutiny and Pressure

- Legal risk
 - Individual claims, e.g., unlawful discrimination, retaliation, or discharge
 - Class claims, e.g., national origin discrimination
 - Regulatory scrutiny, e.g., National Labor Relations Board
- Reputational risk
 - Topics lend themselves to increased possibility of employees/customers publicly airing grievances
 - Customers are increasingly using buying power as leverage with respect to social and political issues
- Competitive risk
 - Employers may feel pressured, by employees, customers, or other stakeholders, to take a position alongside their peer organizations
 - In competitive market for talent, employers' response to social issues has potential to attract/deter candidates

6. Consider Employee Morale

- Advise employees that others may focus on impact, not intent, of their communications
- When in doubt, follow the “golden rule”
- Identify resources, such as leadership or EAP, for support

7. Provide Outlet for Expression

- Create forum or space for facilitated dialogue on challenging topics:
 - Intranet
 - Company blog
 - Voluntary “town halls”
 - Small group meetings
- Consider compromise (e.g., t-shirt v. small bracelet)

8. Limit Liability

- Consistently apply policy, investigate alleged violations, and reprimands
 - Careful not to pick “winners” and “losers” amongst competing issues
- When responding, consider whether subject of employee’s advocacy has a direct nexus to terms and conditions of employment

9. Identify Corporate Priorities

- Consider impact of policy on company culture
- Consider impact of policy on recruitment and retention
- Be aware of allegations of “performative allyship” and “corporate hypocrisy”

10. It’s Your Company

- At the end of the day, it is your company, so it is your choice
- Consider all factors above
- Make sure to think about all stakeholders, including employees, officers, shareholders, and the community
- Be consistent