

Election Year Labor and Employment Law Considerations for Private Employers

Few would dispute that the 2016 election season has been one of the odder elections in recent memory.

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Featuring circus-like debates and a brash real estate developer-cum-reality TV star, a democratic socialist, and a former First Lady under FBI investigation as potential major party nominees, the primaries alone have not failed to provide fodder for workplace discussion. For private practice employment lawyers, this national spectacle adds yet another mine into the minefield of labor and employment law. What rights and liabilities would arise if an employer took adverse action against an employee simply because the employer disagreed with the employees politics? Or could on-the-job political discussion be so obnoxious as to create a hostile work environment? These and other issues may confront labor and employment lawyers in this election year.

This article examines some election-year concerns potentially applicable to private-sector for-profit employment relationships as we move towards the 2016 general election. Given that scope, several election-year issues relevant in other contexts are not addressed in detail. These include the Hatch Act's prohibition on the ability of some federal employees to engage in various types of on-the-job political activities, the protection that some public-sector employees may enjoy against political-based discrimination, and implications that employee political activities may carry for non-profit employers.

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