

A hand in a dark suit jacket is shown from the wrist up, pointing upwards with the index finger. The years 2021, 2022, 2023, 2024, and 2025 are overlaid on the hand, with 2024 being the largest and most prominent. The background is a blurred outdoor scene with trees and a bright sky.

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TODAY'S AGENDA

Kristen Smith – (12:00PM-12:05PM)

- Introduction

Kevin Cope – (12:05PM-12:15PM)

- Latest Non-Compete Ban Developments

Travis Talerico – (12:15 PM-12:25PM)

- Political Speech in the Workplace

Laura Harshbarger – (12:25PM-12:35PM)

- DEI Litigation Update & Best Practices

Latest Non-Compete Ban Developments



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Political Speech in the Workplace



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Political Speech: Background

- Private employers do not commit a First Amendment violation when disciplining or terminating employees for speech
 - Why: Freedom of speech protections under the First Amendment of the US Constitution do not extend to private employers.
- BUT private employers may not freely punish employees for their expressions, even if the employer is private and the speech occurs in the workplace

Political Speech: Private Sector Employer Considerations

- Private sector employers in New York **must consider the following:**
 - The terms of any employment contract or employee handbook
 - Whether the speech is protected concerted activity under the NLRA
 - New York Labor Law protections related to political speech
 - Whether the discipline would be considered retaliation for protected activity or a violation of public policy
 - Any prior discipline, or lack of prior discipline, that could give rise to a discrimination claim under Title VII, the New York State Human Rights Law, and/or the New York City Human Rights Law

Political Speech: National Labor Relations Act

- Employers must ensure that a policy limiting employee speech does not interfere with employees' rights under the NLRA
- **Two categories of potential claims** under the NLRA:
 - (1) Section 7 Claims: If the conduct is deemed to be protected, concerted activity related to the workplace under Section 7 of the NLRA; and
 - (2) Disparate application claims - these claims would allege that the employer did not consistently apply its speech policies to this conduct and/or that it applied the policies more harshly for union supporters.
- **Best Practice:** Include a disclaimer in any policy limiting employee speech that the policy is not intended to interfere with employees' Section 7 rights

Political Speech: Title VII, NYSHRL, NYCHRL

- **Title VII:** Prohibits employment discrimination based on race, color, religion, sex, and national origin.
 - For employers in New York → Also note the additional protected categories under New York State Human Rights Law
 - For employers in New York City → Also note the additional protected categories under New York State Human Rights Law and the New York City Human Rights Law
- **Best Practice:** Determine whether similar types of speech by similarly situated employees have resulted in discipline or termination, and whether discipline or termination in the instance at issue may lead to a discrimination claim.
 - Ensure facially neutral application of policy restricting political speech
 - Facially neutral = prohibiting all political speech, not just speech by one political party or expressing a particular point of view

Political Speech: New York Labor Law § 201-d

- Prohibits employers from discriminating against employees for “off-duty” legal political activities and recreational activities (See New York Labor Law § 201-d(2)(a), (c))
- **“Political activities”**:
 - (i) running for public office,
 - (ii) campaigning for a candidate for public office, or
 - (iii) participating in fund-raising activities for the benefit of a candidate, political party or political advocacy group
- **“Recreational activities”**: Any lawful, leisure-time activity, for which the employee receives no compensation and which is generally engaged in for recreational purposes, including but not limited to sports, games, hobbies, exercise, reading and the viewing of television, movies and similar material. (See New York Labor Law § 201-d(1)(b))
- **Best Practice**: Employers should consider their workforce and what constitutes off-duty with respect to their specific work environment

Political Speech: General Considerations

- Remind employees of their obligation to maintain civility in the workplace, and to respect their co-workers, regardless of their political views
- Remind employees of applicable non-harassment policies
- Remind employees of proper channels to report any workplace conduct they find inappropriate or harassing
- When developing any policies restricting speech, ensure that they are drafted and applied neutrally

DEI Litigation Update & Best Practices



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Questions?



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Latest Non-Compete Ban Developments

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Sexual Harassment Prevention Training

To combat harassment in the workplace, every New York State employer must provide harassment prevention training for all employees annually.

For more information on Bond's online sexual harassment training [click here](#) or email bondonline@bsk.com

New York Employment Law: The Essential Guide

Purchase through Amazon [here](#).

Thank You

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It is not to be considered as legal advice.
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