

Work**Smarts** Virtual Seminar

MYTH BUSTERS & HOT BUTTON ISSUES: From the 2024 Election to the Israeli Conflict, Breaking Down How Employers Should Deal with Hot Button Issues in the Workplace

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Today's Workplace – Employee Discussions



Religion



Judaism vs. Israel
Christianity

Politics

Political Parties
Political Candidates
Political Positioning
Immigration
Ukraine vs. Russia



Sociocultural

Colonization
Reproduction
Privilege
DEI



Workplaces Considerations

- Freedom of Speech
- Political Freedom
- Employee Safety
- Title VI, VII and State Anti-Discrimination laws
- Less Direct Involvement in Investments and Holdings and Impact of Efforts to Pass Anti-ESG Legislation



What Does the Law Say?

Title VII

- Title VII prohibits an employer from discriminating against employees with respect to:
 - their compensation,
 - terms,
 - conditions or
 - privileges of employment
- Because of an individual's race, color, religion, sex or national origin or any other protected category.

Title VI

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in programs or activities that receive federal financial assistance.

Title VI states that:

- No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

State Anti-Discrimination Laws

Virtually every state has an anti-discrimination law (“human rights act”) that prohibits discrimination against most or all of the following protected classes:

Race	Creed
Color	Age
Religion	Sex
National Origin	

- Number of employees required to make laws applicable varies from state to state.
- Individuals acting directly or indirectly as an agent of an employer.

Hate Speech and Hate Crime

Hate speech is any form of expression through which speakers intend to vilify, humiliate, or incite hatred against a group or a class of persons on the basis of race, religion, skin color, sexual identity, gender identity, ethnicity, disability, or national origin. Hate crimes are overt acts that can include acts of violence against persons or property, violation or deprivation of civil rights, certain “true threats,” or acts of intimidation, or conspiracy to commit these crimes.

Hate Speech

In the United States, hate speech is protected by the First Amendment. Courts extend this protection on the grounds that the First Amendment requires the government to strictly protect robust debate on matters of public concern even when such debate devolves into distasteful, offensive, or hateful speech that causes others to feel grief, anger, or fear. (The Supreme Court's decision in [Snyder v. Phelps](#) provides an example of this legal reasoning.) Under current First Amendment jurisprudence, hate speech can only be criminalized when it directly incites imminent criminal activity or consists of specific threats of violence targeted against a person or group.

But hate speech can violate workplace anti-discrimination laws.

Hate Crime

For the purposes of collecting statistics, the FBI has defined a hate crime as a “criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity,” including skin color and national origin. Hate crimes are overt acts that can include acts of violence against persons or property, violation or deprivation of civil rights, certain “true threats,” or acts of intimidation, or conspiracy to commit these crimes. The Supreme Court has upheld laws that either criminalize these acts or impose a harsher punishment when it can be proven that the defendant targeted the victim because of the victim's race, ethnicity, identity, or beliefs. A hate crime is more than offensive speech or conduct; it is specific criminal behavior that ranges from property crimes like vandalism and arson to acts of intimidation, assault, and murder. Victims of hate crimes can include institutions, religious organizations and government entities as well as individuals.

National Labor Relations Act (NLRA)



Section 7 of NLRA – Protected Concerted Activity

- Protects right to engage in concerted activities for the purpose of “mutual aid or protection” in the workplace.
- To be concerted activity:
 - (1) there must be at least two employees involved; and
 - (2) the subject of the discussion or activity must relate to employees' working conditions.

NLRA and Political Speech

- NLRA protects political speech or conduct that is
 - (1) is concerted (includes activity that is a “logical outgrowth” of related and protected concerted activity);
 - (2) there is a close nexus between the political expression and employment; and
 - (3) it involves terms and conditions of employment under the employer’s control.
- NLRB’s General Counsel Jennifer Abruzzo acknowledges that she wants to expand the scope of protected concerted activity to include social justice and certain “political statements.”

Discrimination: Harassment

Harassment is a type of discrimination. It is often referred to as a “hostile work environment.”

Harassment can be defined as:

- unwelcome conduct based on one’s protected class where enduring the offensive conduct becomes a term or condition of employment; or
- the conduct is so severe or pervasive that it creates an environment that a reasonable person would consider to be intimidating, hostile, or abusive.

Remember, one instance of severe conduct can be enough.

Harassment need not be targeted at the offended individual to create a hostile work environment claim.

Hostile Work Environment Standard

- Standard: Objective not subjective.
 - The behavior must be more than just offensive, it must be objectively abusive.
- “Reasonable person in plaintiff’s position” – *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998).

Types of Harassment

- Hostile Environment can come from:
 - Co-workers
 - Supervisor or Managers
 - Non-Employee/Third Parties

What is NOT Harassment?

- Conduct does not necessarily become *unlawful* harassment simply because the employee:
 - Thinks the action/decision is unfair
 - Does not agree with the action/decision
 - Does not like the action/decision
- Title VII is not intended to be a “general civility code.”

What is NOT Harassment?

- If the conduct in question is not legally harassment, it can still be inappropriate for the workplace
- It is not legal harassment if it does not meet the elements:
 - Workplace related
 - Protected basis
 - Unwelcome
 - Unlawful consequence
- Inappropriate conduct should still be immediately addressed because, if left alone, it could lead to additional conduct that could constitute legal harassment

What is NOT Harassment?

- Examples of conduct that do not rise to the level of harassment but may still be inappropriate for the workplace:
 - Bullying
 - Inappropriate language
 - Gossip
 - Disparaging comments that are not based on a protected category

What are Limitations of the Law

- Unprofessional and inappropriate language or behavior is not always actionable unless it can be shown to be severe or pervasive.
- Harassment not motivated by a general hostility toward a protected class (e.g. religion) is NOT actionable.
 - Title VII does not function as a “general civility code.”
 - Use of threatening language while it may cause an employee to feel unsafe is not actionable unless it is shown that the language is based on a protected category.

What are Limitations of the Law

- Discussing political issues or attending political march or rally is NOT a violation of discrimination laws.
- Advocating for social justice issues in the workplace may be protected by the NLRA.

Outside of the Law – Other Rules



EMPLOYER POLICIES

- Anti-Bullying and Harassment Policies
 - These policies are often implicated in complaints involving religion, politics and sociocultural matters because the policies prohibit “Criticism without offering constructive solution,” “persecution through threats and instilling fear,” “spreading malicious rumors,” and “shouting.”
- Inclusivity Policies
 - Does your institution have an inclusivity statement as part of its mission, values or even as part of its policies?



How Religious, Political and Sociocultural Conversations Can Result in a Title VI or VII Complaint



Religion

- Highlighting the Israel-Hamas Conflict

Colleges and Universities Have Been at the Forefront of the Israel-Hamas Controversy (this is not unusual)

- Students have always been at the forefront of social justice movements, from civil rights, to the Vietnam War, Apartheid, and the fight for immigrant rights.
- With the current protests, more than 2,100 people have been arrested on college and university campuses **since April 2024**, including Columbia, Yale, NYU, CUNY City College, Harvard, MIT, Emerson, George Washington University, UNC, Emory, University of Michigan, University of Wisconsin-Madison, University of Minnesota, UT- Austin, Washing University, Northwestern, Ohio State, Indiana U, UC Berkeley, US Los Angeles, California State Polytechnic, and many others.
- Every engagement by these institutions to moderate the protests has been considered a failure, at best.
- Most criticism is lodged at the administrations' failure to engage in open dialogue and provide transparency around investments.

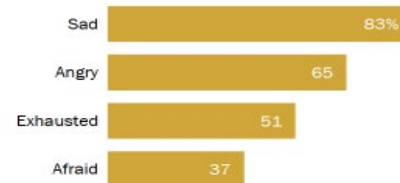
There is NO Middle Ground

...there is a lot of visceral emotion but people are not well-informed about past and current events

- The conflict has fueled extreme polarization of views in the U.S.
- The *Pew Research Center* reports that most Americans have strong emotional reactions to the Israel-Hamas War. Yet, for the most part Americans are not paying close attention to the news about it.

Negative emotions to news about the Israel-Hamas war are widespread in U.S.

% who say hearing or reading news about the Israel-Hamas war makes them feel ...



Source: Survey of U.S. adults conducted Feb. 13-25, 2024.
"Majority in U.S. Say Israel Has Valid Reasons for Fighting; Fewer Say the Same about Hamas"

PEW RESEARCH CENTER

Discussions About the Israel-Hamas Conflict Can Become Discriminatory

Company statements or co-worker comments about the Middle East conflict could give rise to a claim of discrimination if a Jewish or Palestinian worker feels stigmatized or subject to knee-jerk assumptions about their beliefs based on their ethnic background.

Imagine having a conversation with a group of your colleagues, which includes a few Jewish co-workers. During the conversation it is apparent that the group feels strongly about Israel's actions in Palestine. When tempers fly, several start expressing their disagreement with Zionism and say that they don't like Zionist and don't want anything to do with them. Over the course of the day, the "Anti-Zionists" relay the conversation to their colleagues and groups who were not in the conversation begin to seek out the Jewish co-workers to argue against Zionism. Some of the Jewish co-workers are followed around campus as word gets out with some demanding to know how they could support Zionism after what is happening in Palestine. Someone even says "I have a friend whose family was killed in Palestine; karma is going to get supporters like you!"

EEOC – Special Guidance on Israel-Hamas Conflict

- In 2024, the EEOC issued special guidance to address the Israel-Hamas War in relation to workplace conflicts.
 - It is a reminder that unlawful discrimination includes treating: (i) an individual adversely based on their actual or perceived membership in a racial or national origin group (e.g., Israeli or Palestinian); (ii) an individual adversely based on an assumption that the individual holds certain views because of their race, religion or national origin; (iii) an individual adversely because of perceived or actual association with a race, religion or person of national origin; or (iv) treating individuals of different religions, national origins, or races differently because of these protected characteristics when they engage in similar speech.

EEOC – Special Guidance on Israel-Hamas Conflict, Cont'd.

- Reminds us that Title VII bars job segregation based on religion, national origin or race. For example, an employer may not assign an employee to a non-customer facing position because of actual or assumed customer bias against religious or ethnic dress (i.e., hijab, turban, or kippah/yarmulke).
- Reminds us that Title VII prohibits unwelcome remarks or conduct based on an individual's actual or perceived religion, national origin or race. Harassment can include remarks or conduct based on an individual's birthplace, ethnicity, culture, name, language, dress or accent.
- Reminds us that conduct **outside of work** can contribute to a hostile work environment. Gives the following example: if an employee posts religious slurs about a Muslim or Jewish coworker on their personal social media, it can affect the workplace if the coworker learns about the posts directly, or other coworkers see and discuss them at work.

Politics

Americans are angry with each other and caught in a partisan hyperconflict that divides politicians, communities—and even families. This polarization has become so intense that many people no longer trust anyone from a differing perspective.

-- *Divided Politics, Divided Nation, Hyperconflict in the Trump Era*, Darrell M. West

Political Speech Can Become Discriminatory

The term “*DEI Hire*” and “*Woke*” are increasingly used in political forums; so much so that many people are becoming comfortable with the terms in common parlance. What happens when these terms are used in the workplace to refer to someone?

Political opinions about immigration have become common as well. Many politicians argue that immigrants are driving up the crime rate. What happens if an employee posts on their social media: *these immigrants are all criminals, and I am surrounded by them at work and in the streets; send them all back!!!* The employee works with several newly immigrated co-workers.

Sociocultural

Every aspect of our workplace is impacted by sociocultural factors. These factors impact a company's shared mission and values.

They include: social class, value of families, generational differences, environmental awareness, health and health disparities, etc.

Sociocultural Discussions Can Become Discriminatory

Our society has begun to use the term “Colonizer” with some frequency. It is used frequently to describe white cultures. More recently, it has gained popularity in reference to Israel. Can you say a Jewish person is a “Colonizer”?

CONCLUSION: Where to Draw the Line in the Sand?

Political Opinion vs Discrimination

Freedom of Speech vs. Hostile Work Environment

Diving Deeper

- Ex 1: Can you display a poster in your office which says “*From the River to the Sea*”?
- Ex 2: Is it illegal to call someone a “Zionist”? What about an “Anti-Zionist”?
- Ex 3: Is it discriminatory to call someone “Anti-Semitic”?
- Ex 4: Can you compare Netanyahu to Hitler or draw contemporary policy comparisons between Israel and Nazi Germany?
- Ex 5: Can you call someone Jewish a “Colonizer”? What about someone white?
- Ex 6: Can you say Israel treats the Palestinians like Jewish people treated Jesus?

Examples to Consider (cont'd)

Ex 7: Can you call someone a “Boomer”?

Ex 8: In relation to get getting a task accomplished can you say “we just need more Indians”?

Ex 9: Can you describe a female co-worker’s reaction as “hysterical”?

Ex 10: Can you tell a co-worker they are “whitewashing” or say they have been “whitewashed”?

Ex 11: Can you call someone of Asian descent “Oriental”?

Examples to Consider (cont'd)

Recent News

Ex 12: Can we talk about Tyreek Hill being detained?

If not, why, and if so, is it possible to cross a line?

Ex 13: Can we talk about the Presidential debate?

Ex 14: Can we repeat the statement allegedly made by JD Vance about “*childless ladies*”?

Ex 15: Is it correct to assert that your expression of political views in the workplace is constitutionally protected?

Takeaways



Helpful Tips

- Maintain Boundaries
- Remember your company's HR and institutional values and policies around respectful dialogue.
 - Review your policies to ensure that your conduct policies are up to date and clearly prohibits speech that is *abusive, discriminatory, derogatory or leads to a hostile work environment*.
 - Remind employees about any policies and rules covering anti-discrimination, harassment, retaliation, social media, voting leave, and any other related areas.
- Train your managers on how to enforce lawful policies related to political activity or speech and how to address unproductive conversations.
 - Apply all speech policies and rules in a non-discriminatory, neutral, and consistent manner.
- Avail yourself of Employee Assistance Programs when needed.

Helpful Tips

- Acknowledge that regardless of individuals' political party or beliefs, tensions are running high throughout the community, and many team members may be feeling stress or fear related to the upcoming election.
- The workplace is a place where everyone should feel safe, welcomed, respected and included.
- Employers do not want to limit healthy dialogue about social issues, but it does have a vested interest in reducing disruptions and maintaining a culture of respect.
- Approach these conversations from a place of curiosity and accept that they may not find common ground. Conversation should be seen as an opportunity for better understanding, not a means to change someone's mind.

Helpful Tips

- Be prepared to promptly and effectively address any violent, substantially disruptive, unlawful, and other political or sociocultural communications and activities.
 - Consider making dispute resolution procedures available to employees who may feel uncomfortable by political or sociocultural communications and activities in the workplace.
 - Designate an HR or legal contact for employees to contact for any concerns about these issues.
 - If conflict arises, consider communicating with counsel, both internal and external, to minimize and hopefully avoid reputational risks to the company's brand.
 - Have an action plan of what to do and what resources to activate if brand reputation is at risk.

Thank You!



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