Today's Business:
Navigating free speech issues in the workplace

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Freedom of speech is a bedrock of American society and one of the most fundamental rights protected both by the First Amendment to the United States Constitution and Article 1 of the Connecticut State Constitution. While those freedoms are sacrosanct when speaking as a private citizen, there has been ongoing tension regarding the extent those rights apply, or can be abridged, in the employment setting.

The Connecticut legislature attempted to adjust the balance with adoption of an amendment in this last legislative session, to strengthen rights of employees. Since its adoption, this statute, commonly known as Connecticut's free speech statute, has prohibited employers from disciplining or discharging employees for exercising their rights to free speech, freedom of religion, freedom of association — and freedom from the requirement to listen to speech. The statute exempts free speech rights if the speech "substantially or materially interfere(s) with the employee's bona fide job performance or the working relationship between the employer and the employee." That is, a worker does not have the right to speech that interferes with job performance.

In order to state a claim under this law, an employee would have to show that he or she had been disciplined or discharged due to exercise of free speech rights, was speaking as a private citizen, rather than as part of his/her employment duties, that the speech was a matter of public concern, rather than simply about wholly personal matters, and that the speech did not interfere with his or her job functions or relationship with the employer.

One hot button issue is whether an employer can require workers to attend, under threat of discipline or discharge, meetings at which the employer, or its representative, communicates the employer's opinion concerning religious or political matters, or requires the employees to listen to speech or view communications about these personal matters. You can't, for example, require workers to view a candidate's political advertisements.

The most recent amendment to the statute, effective on July 1, outlawed such meetings, while clarifying that the act does not prohibit any communication of information that may be required by law, necessary for performance of job duties, or casual conversations between employer and employees. The legislature also made the statute actionable for the "threat" of discipline or discharge, thereby broadening grounds for recovery.

To the apparent detriment of employees, the amendment eliminated the remedy of punitive damages, substituting language allowing recovery for "the full amount of gross loss of wages or compensation, with costs and such reasonable attorney's fees as may be allowed by the court."

Overall, the amendments raise some thorny issues for employers.

Insofar as a business may have policies relating to social media or generally regulating employee behavior, the business should review the policies to determine whether they conflict with the protections afforded by the updated free speech statute. And while the recent amendments seem to have been intended to define improper meetings to apply very specifically to political and religious matters, there is some confusion as to whether the new language is in conflict with convening so-called "Captive Audience" meetings, which traditionally have been allowed for an employer to share views about union organizing.

One thing abundantly clear, however, is that in these times of heightened tensions regarding political and religious discourse, it is ever more complicated for employers and employees to navigate free speech issues in the workplace. However imperfect, Connecticut's free speech statute provides both employers and employees with some guidance on how to thread the needle.

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