

# Politics in the Workplace: What Are Your Protections?

October 18, 2016

In [an article published today](#) for Law360, partner [Debra Katz](#) and I explained the surprising state of the law surrounding protections for employees and restrictions on employers in issues involving politics in the workplace. Particularly in today's incredibly contentious political climate, we thought that it was critical that employees and employers have a better understanding of their rights and limitations in this area. Our research revealed a few main takeaways:

- (1)** While government employees enjoy fairly broad protections against [political affiliation discrimination](#), there is no federal law giving employees of private companies a right to sue for discrimination on the basis of their political affiliations.
  - (2)** Although some states have passed their own laws prohibiting certain types of political affiliation discrimination, many states have either weak or nonexistent political affiliation discrimination protections for employees, leaving employees in many areas with no right to sue if they are fired for their political actions or beliefs.
  - (3)** Fewer states still have passed laws prohibiting coercive political activity by employers and/or providing employees with a right of action for such activity.
  - (4)** Although federal law does purport to prohibit certain types of coercive political activity by employers – albeit without providing a right of action to employees – the Federal Election Commission (FEC) has been hobbled in its ability to investigate such activity by its Republican commissioners. The Commission has declined to investigate some cases containing disturbing allegations, including an employer requiring his employees to attend a political rally and incentivizing employees to donate to political action committees and candidates.
- As the article explains, “the refusal to investigate facially substantive claims is thus exacerbating the increased potential for coercive activity brought on by the Supreme Court’s *Citizens United* decision. Sufficiently aggressive donors for sufficiently aggressive candidates, neither of whom are held in check by the agencies putatively empowered to restrain them, will make rules of their own, and the rest of us — including employees whose rights to nondiscrimination for refusal to bow down to the political will of their employers are virtually nonexistent — will be left to deal with the consequences.”
- (5)** Finally, *Citizens United* may have opened the door to permitting private employers to expend employee time working on behalf of political candidates or causes.

Imagine your shock if you were told by a friend that he or she had been fired after revealing to their supervisor the candidate for whom they intended to vote in this year's presidential election. But that very thing is legal in much of the country. Imagine the injustice you would feel if your employer rewarded employees with incentives and favorable treatment because those employees agreed to donate to the employer's conspicuously partisan political action committee. But that sort of activity is already happening, and the FEC is failing to prevent it. The law in this area is deficient and needs to be addressed, particularly in an increasingly polarized country, before these sorts of stories become

more common.