

Politics In California Workplaces: What Employers Must Know

By **Bradford Kelley and Britney Torres** (October 4, 2024)

California law provides robust protections for employees' political activity, including antidiscrimination laws, off-duty conduct laws, employee voting leave laws, statewide election notice requirements and laws allowing employees to serve as election officers.

These laws make it difficult for employers to control political speech and activity in the workplace, which is expected to increase as the 2024 election approaches, protests continue across the country and citizens engage in discourse on important topics.

How an employer deals with politics in the workplace can have broad implications — affecting not only employee interactions but also customer engagement, vendor relationships, shareholder perception and the organization's brand.

Political Discrimination Protections for Employees

Two sections of the California Labor Code prohibit employers in the state from discriminating against employees for political purposes.

California Labor Code Section 1101 provides that "[n]o employer shall make, adopt, or enforce any rule, regulation, or policy: (a) Forbidding or preventing employees from engaging or participating in politics ... [or] (b) Controlling or directing, or tending to control or direct the political activities or affiliations of employees." [1]

Similarly, Section 1102 provides that "[n]o employer shall coerce or influence or attempt to coerce or influence his employees through or by means of threat of discharge or loss of employment to adopt or follow or refrain from adopting or following any particular course or line of political action or political activity." [2]

In 2023, the U.S. District Court for the Eastern District of California explained, in *Napear v. Bonneville International Corp.*, that Sections 1101 and 1102 are designed to protect "the fundamental right of employees in general to engage in political activity without interference by employers." [3]

Liability under Sections 1101 and 1102 is triggered only if an employer fires an employee based on a political motive. [4] Employees can assert a private action against their employers under Sections 1101 and 1102. [5]

For purposes of Sections 1101 and 1102, the *Napear* ruling noted that the California Supreme Court has defined "political activity" as extending beyond "partisan activity" to include "the espousal of a candidate or a cause, and some degree of action to promote the acceptance thereof by other persons." [6] Some courts have held that a plaintiff must identify a rule, regulation or policy of the employer to bring a claim under Sections 1101 and 1102. [7]

The U.S. Court of Appeals for the Ninth Circuit's 2016 decision in *Couch v. Morgan Stanley &*



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Co. decision illustrates how courts generally approach political discrimination under California law.[8]

Morgan Stanley had approved a request by the plaintiff, a financial adviser, to run for and serve on a California county board. After the plaintiff was elected, the company informed him that he needed to choose between his role at the company or serving on the county board.

After the plaintiff refused to step down from either position, he was terminated. He sued the company for violating California Labor Code Sections 1101 and 1102.

The Ninth Circuit affirmed the district court's conclusion that the company had fired the plaintiff for a legitimate, apolitical reason: because the respective time commitments required to perform each role would prevent the plaintiff from working as a full-time financial adviser and serving on the county board simultaneously. The Ninth Circuit held that the district court correctly dismissed all California political discrimination allegations.

Off-Duty Lawful Conduct

California Labor Code Section 98.6 states that employers may not discharge employees or discriminate against them for, among other activity, lawful conduct occurring during nonworking hours away from the employer's premises.[9]

This provision provides that an employee so treated "shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer." [10] California courts have explained that Section 98.6 does not create a "public policy" on which to base a wrongful discharge in violation of public policy claim.[11]

California Labor Code Section 96(k) allows employees to file claims for lost wages as the result of demotion, suspension or discharge from employment "for lawful conduct occurring during nonworking hours away from the employer's premises." [12] Generally, this law applies to lawful off-duty political activities.

California courts have interpreted the off-duty conduct law narrowly, and held that the law does not provide any substantive rights, "but rather, merely establishes a procedure by which the Labor Commissioner may assert, on behalf of employees, recognized constitutional rights." [13]

California Ban on Employer-Sponsored Meetings

California recently enacted legislation banning employers from taking adverse action against employees for refusing to attend or participate in employer-sponsored meetings, often referred to as "captive audience" meetings, or otherwise requiring them to listen or receive communications regarding employer opinions on political or religious matters.[14]

The new law broadly defines "political matters" to include "matters relating to elections for political office, political parties, legislation, regulation, and the decision to join or support any political party or political or labor organization." [15] The California Labor Commissioner can enforce the law through a citation process.

An employer that violates the law would be subject to a \$500 penalty per employee for each violation. Additionally, under the law, employees can bring civil actions for compensatory and punitive damages.

Business groups have filed lawsuits challenging comparable captive audience bans in other states, arguing the bans violate employers' First Amendment rights and are preempted by the National Labor Relations Act. Business groups in California are expected to challenge the new law on similar grounds.

Employee Time Off to Vote

The California Elections Code makes employees eligible for paid time off for the purpose of voting if they do not have sufficient time outside working hours to vote.[16] The intent of the law is to provide an opportunity to vote to workers who would not be able to do so because of their jobs.

Employees are to be given as much time as they need in order to vote, but only a maximum of two hours is paid. Employers may require employees to give advance notice that they will need additional time off for voting.

Employers may require time off to be taken only at the beginning or end of the employee's shift, whichever allows the most free time for voting and the least time off from the regular working shift, unless otherwise mutually agreed.[17]

The California Election Code also requires employers to post a notice to employees advising them of their rights for taking paid leave for the purpose of voting in statewide elections.[18] The notice must be posted at least 10 days before a statewide election.

For the upcoming Nov. 5 election, employers are required to post the notice by Oct. 26. The notice must be posted either in the workplace or where it can be seen by employees as they enter or exit their place of work.

Employers can download a sample notice from the California secretary of state's website, or they can also call the Elections Division at (916) 657-2166 to order posters of the notices.[19]

Employees Serving as Election Officers or Becoming Candidates for Public Office

Under the California Election Code, employees serving as election officials cannot be suspended or discharged because of their absence while serving as an election officer.[20] Employers are not required to pay employees for the time they are absent from work to serve as election officials under the statute.

In addition, California Labor Code Section 1101 expressly states that "[n]o employer shall make, adopt, or enforce any rule, regulation, or policy: (a) Forbidding or preventing employees ... from becoming candidates for public office." [21]

Voter Influence, Intimidation and Coercion

The California Election Code prohibits anyone from using or threatening to use force, violence, coercion or intimidation to influence another person's voting decisions.

This includes trying to make someone vote or not vote in an election, or vote for or against a particular person or measure as well as retaliating against someone because of how they voted or did not vote in a previous election.[22] Under California law, violations are a felony punishable by up to three years of imprisonment.

Furthermore, California's Ralph Civil Rights Act states that all people in California have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property based on political affiliation among other protected characteristics.[23]

The California Civil Rights Department enforces the Ralph Civil Rights Act and has issued guidance explaining that the act makes it illegal to "[a]dvocate violence against a person due to their actual or perceived protected characteristic, including political affiliation." [24]

California law also provides for the pursuit of a claim under the Bane Civil Rights Act, which forbids anyone from interfering by violence or threat of violence with a person's state or federal constitutional or statutory rights, including the right to vote or freedom of speech.[25]

Takeaways

First, employers can develop a holistic and genuine approach to politics in the workplace based on their values, commitments and existing policies. Employers should consider whether existing policies such as an antidiscrimination policy or social media policy can address a politics in the workplace situation.

Second, in order to comply with California notice requirements, employers must post a notice informing California employees of their time-off-to-vote rights no later than Oct. 26. Employers should download or order the notice as soon as possible.

Third, employers of California employees can inform supervisors and human resource professionals of the requirements and prohibitions under California law, including related policies. Employers should also consider training to ensure any policies are effective and known by all employees.

Fourth, employers should have situational awareness of the evolving legal environment, which will become increasingly important in the future. For instance, the California captive audience ban legislative effort underscores that "political matters" are an active area of legislative interest.

Ultimately, it is critical that California employers prepare for the upcoming election cycle as soon as possible. Politics in the workplace will certainly be an issue beyond the election — especially, for example, with the Israel-Palestinian conflict — and warrants a long-term plan and proactive measures.

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[1] Cal. Lab. Code § 1101.

[2] Cal. Lab. Code § 1102.

[3] *Napear v. Bonneville Int'l Corp.*, 669 F. Supp. 3d 948, 963 (E.D. Cal. 2023).

[4] *Id.*

[5] See Cal. Lab. Code § 1005.

[6] *Napear v. Bonneville Int'l Corp.*, 669 F. Supp. 3d 948, 963 (E.D. Cal. 2023).

[7] *Brahmana v. Lembo*, No. 09-cv-00106-RMW, 2010 WL 965296, at *5 (N.D. Cal. March 17, 2010) (dismissing plaintiff's claims brought under Sections 1101 and 1102, in part, due to plaintiff's failure to "allege the existence of any rule, regulation, or policy forbidding employees from participating in politics or controlling their political activities" or to allege that "plaintiff was coerced by threat of discharge to adopt or refrain from adopting any course of political activity"); *Prem v. Access Servs. Inc.*, No. 11-cv-01358-ODW-JEM, 2011 WL 3516170, at *5 (C.D. Cal. Aug. 10, 2011) (granting motion to dismiss plaintiff's claims under Sections 1101 and 1102, in part, because the plaintiff had failed to allege the existence of a "rule, regulation, or policy").

[8] See *Couch v. Morgan Stanley & Co. Inc.*, 656 F. App'x 841, 842 (9th Cir. 2016).

[9] Cal. Lab. Code § 98.6.

[10] *Id.* at § 98.6(b)(1).

[11] *Grinzi v. San Diego Hospice Corp.*, 120 Cal. App. 4th 72, 88 (2004); *Snyder v. Alight Solutions LLC, & Does 1 To 10*, 2021 WL 4622392, at *3 (C.D. Cal. May 5, 2021).

[12] Cal. Lab. Code § 96.

[13] *Barbee v. Household Auto. Fin. Corp.*, 113 Cal. App. 4th 525, 533 (2003).

[14] Cal. S.B. 399. Because the California governor signed the bill, a new California labor code section will be added, specifically Cal. Lab. Code § 1137.

[15] *Id.*

[16] Cal. Elec. Code § 14000(a).

[17] *Id.* at § 14000(b).

[18] Cal. Elec. Code § 14001.

[19] See California Secretary of State, "Time off to Vote" Notices, <https://www.sos.ca.gov/elections/time-vote-notices>.

[20] Cal. Elec. Code § 12312.

[21] Cal. Lab. Code § 1101.

[22] Cal. Elec. Code § 18540.

[23] Cal. Civ. Code § 51.7.

[24] See California Civil Rights Division Fact Sheet, https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2017/12/Ralph-Fact-Sheet_ENG.pdf.

[25] Cal. Civ. Code § 52.1.

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