



**NHRMA 24**

86TH ANNUAL CONFERENCE + TRADESHOW

**CS18**

# **Pre- and Post-Election Considerations to Maintain a Harmonious Workplace**

# Pre- and Post-Election Considerations to Maintain a Harmonious Workplace

Northwest Human Resource Management Association  
2024 Annual Conference  
Portland, Oregon

Presented by  
Liani Reeves & Amy Robinson



# The Prelude (Opening Act)

- **2020:** A global pandemic, George Floyd and Black Lives Matter, and a presidential election
- **2021:** The pandemic continues, vaccine mandate “confusion,” a Capitol riot, an impeachment, and an inauguration
- **2022:** Continued pandemic, vaccine mandate challenge successes, *Dobbs* overturns *Roe*, mid-term elections, and Russia invades Ukraine
- **2023:** Israel-Hamas conflict
- **2024:** U.S. presidential election, *Loper Bright Enterprises* overturns *Chevron*



The background is a dark brown color with a pattern of musical notes and staves. The notes are in shades of yellow and orange, and the staves are in shades of brown and orange. The notes and staves are scattered across the background, creating a sense of movement and rhythm. The title "The Instruments" is centered in the middle of the image in a white, bold, sans-serif font.

# The Instruments

# *The Woodwinds*

- **The First Amendment/Free Speech Entitlements**

- First Amendment (public employers only):  
Right to speak as a private citizen on a matter of public concern, provided it does not interfere with official responsibilities AND doesn't violate state ethics limitations which typically prohibit use of public funds for political campaigns.

- Post #MeToo protections for reporting/disclosing harassment or other unlawful working conditions



# *The Brass Instruments*

- **The NLRA/Rights to Concerted Activity**
  - Where employee's activities involve opposing or discussing management practices then the NLRA prohibits employers from disciplining them or taking other steps reasonably expected to interfere with "concerted activity"



# *The Strings*

- **Workplace Safety Protections**

- Creating a safe and healthy workplace includes preventing known hazards—and that may include workplace violence.
- Per OSHA, an employer that has experienced or becomes aware of actual or threatened workplace violence would be on notice of the risk of workplace violence.



# *The Percussion Section*

- **Anti-Discrimination Laws**

- Title VII and state equivalents: Don't extend employment discrimination protection on the basis of political affiliation.
- Washington Law Against Discrimination (WLAD), RCW 49.60
- Oregon's Civil Rights Law, ORS 659A
- Alaska Human Rights Act, AS 18.80
- City of Seattle: "Political Affiliation" is a protected class





The background features a dark brown gradient with various musical notations in shades of yellow and orange. These include individual notes, stems, and treble clefs scattered across the frame. A prominent horizontal band of white musical notation with yellow notes and stems runs across the middle. The overall aesthetic is artistic and musical.

# The Orchestration

# *Orchestration*

## **Policies to consult/consider to ensure your teams are playing in tune:**

- **EEO and nondiscrimination**
- **Professionalism/code of conduct**
- **Workplace violence**
- **Political activities**
- **Limitations on solicitation**
- **Dress codes: Might prohibit wearing/display of political images, etc.**
- **Use of company facilities and equipment**



The background of the slide features a dark red color with faint, golden musical notation, including staves and notes, scattered across the top and right sides. In the top left corner, there are golden icons of a violin and a pair of musical notes.

# *Orchestration*

## **Considerations for political activity policies:**

- **Communicate the work environment you expect to be observed**
- **Encourage civility and respect**
- **Clearly identify conduct that will run afoul of policy**
- **Set forth consequences for violation**
- **Ensure it is consistent with other personnel policies**





# *Orchestration*

**Policies should be clear they are not intended to interfere with protected speech and activities, and enforcement efforts should likewise respect employees' rights in this regard:**

- **NLRA acknowledgment/right to concerted activity**
- **Protected communications related to:**
  - **Sexual harassment and sexual assault**
  - **Reporting unlawful conduct**



# *Orchestration*

**Where an employee's political speech or activity is the subject of potential discipline, before acting, consider:**

- Is it protected? Content matters!
- How and to what extent the speech/activity actually impacts harmony?
  - Does it have a detrimental impact on close working relationships?
  - Does it interfere with normal operations of business?
- Be careful not to overreact: Does the “punishment fit the crime.”



The background features a dark brown gradient with various musical symbols scattered throughout. These include yellow and white notes, stems, and staves, some of which are faintly visible in the background. The overall aesthetic is artistic and musical.

# The Musical Genre

# ***ROCK: The Activist Employee***





# Politics at Work

- You open up email to find that your employee, Kelly, has sent an all-staff email advocating for a local ballot measure, including how to donate to the cause.
- Your momentary hope that no one will respond is dashed, when you start seeing the responses come in fast and furious, with strong opinions on all sides.
- It's getting divisive and personal, and no one is getting any work done.
- What can you do?





# Politics at Work



- **Adopt workplace policies that limit political activity to employee's personal time and not during work hours or through use of company resources.**
- **Also consider application of professionalism, acceptable use, and nonsolicitation policies.**

# Politics at Work

- **But be careful!**
  - Policies must be enforced neutrally and consistently
  - Consider and apply labor laws and NLRB regulations
- **Consider risks:**
  - Discrimination claims
  - Morale
  - Reputational issues



# Politics at Work: Public Employers



- **Special considerations for public employers:**
  - First Amendment protections for public employees apply when the employee is speaking as a private citizen on a matter of public concern, *but* the speech may not be protected if the speech will substantially interfere with the official responsibilities of the office.
  - There are also restrictions on use of public resources for political activity.

# ***FOLK: The Socially Conscious Employer***



# The Socially Conscious Employer

**General best practices when the company is taking positions on social or political issues:**

- **Be very clear who is authorized to speak on behalf of the employer.**
- **Affirm company values, and show support for individuals impacted by current events.**
- **Avoid definitive statements about unfolding/unclear events—don't place blame too soon.**



# The Socially Conscious Employer

## CAUTION ABOUT MANDATORY MEETINGS!

- **Just last year Washington enacted a new law that states:**
  - *An employer may not threaten or impose any adverse action against an employee who refuses to: (i) attend or participate in an employer-sponsored meeting that has the primary purpose of communicating the employer's opinion on political or religious matters; or (ii) listen to a speech or view a communication (including electronic communications) providing such employer opinions.*
  - **Just as most similar laws, this law also included robust anti-retaliation protections for any negative actions taken against employees asserting their rights under this law.**
- **Oregon adopted a similar law in 2010.**



# The Socially Conscious Employer

## LEGAL LIMITS ON MANDATORY MEETINGS

### Definitions (under Washington's new law):

- “Political matters” are those relating to “elections for political office, political parties, proposals to change legislation, proposals to change regulations, and the decision to join or support any political party or political, civic, community, fraternal, or labor association or organization.”
- “Religious matters” are those relating to “religious affiliation and practice, and the decision to join or support any religious organization or association.”



# ***INTERMISSION: Employee Voting Leave***



- In Alaska, employees must be allowed paid time off to vote, unless employees have at least two consecutive hours to vote, either between the opening of the polls and the beginning of the shift, or between the end of the shift and when the polls closed.
- Washington and Oregon have no such requirement.



# *CLASSICAL: When Politics and Religion Play Together*



# Scenario: Where Politics and Religion Intersect

- Your company's annual, mandatory anti-harassment training is underway, and this year you are doing an online module that has videos and slides with examples of a number of scenarios, followed by questions that employees have to answer correctly to advance.
- One morning, you arrive to work to find an email from an employee who tells you they can't complete the training because "it requires them to agree with same sex marriage against [their] personal and political beliefs." They say they would like to find out if there is another way they can satisfy the training obligation and assure you they would never discriminate or harass anyone because of their sexual orientation.
- How do you respond?



# Scenario: Where Politics and Religion Intersect

- Although intertwined with political references, this does present a potential issue where a work requirement (the training) may interfere with their personal religious beliefs.
- While there is no obligation to accommodate employee's personal political beliefs, employers are obligated to provide reasonable accommodations where a work requirement (here, the training) interferes with an employee's religious beliefs or practices.
- Given the potential need for accommodation, the company will need to engage in the interactive process to determine if and to what extent an accommodation can be provided, unless it would be an undue hardship.



# Religion at Work: Reasonable Accommodation

- **What is a religious belief or practice?**
  - A theistic or non-theistic belief system that addresses fundamental questions of existence and morality.
  - A religion need not be traditional, old, logical, or formally organized.
  - The individual believer's belief, observance, and practice need not be officially recognized by any particular organized religion.
- **Determining whether a practice is religious turns not on the nature of the activity, but on the employee's motivation.**
- **CAUTION:** The same practice might be engaged in by one person for religious reasons and by another person for purely secular reasons.



# Religion at Work: Undue Hardship

- While just a few years ago the standard for accommodation was different in the context of religion, based upon the recent Supreme Court decision, *Groff v. DeJoy*, now imposes a heightened standard:
  - In this context, an undue hardship exists if the employer can prove an accommodation would result in **substantial increased costs** in relation to the conduct of the particular business.
  - Must take into account all relevant factors, including the particular accommodation at issue and their practical impact in light of the nature, size, and operating cost of an employer.



# The Encore



# Where Politics, Religion, and Work Intersect

- The recent *Dobbs* decision and current state of abortion rights has triggered robust debates that touch upon deeply held personal, philosophical, and often religious beliefs both within and outside the workplace.
- It also may implicate additional legal protections that need to be considered.
- In particular, the Pregnancy Discrimination Act and Title VII prohibit discrimination against an employee because they had an abortion or expressed that they were considering having an abortion.



# Where Politics, Religion, and Work Intersect

- It would also be unlawful for a manager to pressure an employee to have an abortion, or not to have an abortion, in order to retain their job, get better assignments, or stay on a path for advancement.
- Example: An employee files a complaint about their manager, who has been particularly outspoken lately about their pro-life beliefs. They complain that they were recently passed over for a promotion and feels the decision was “payback.”





# Final Takeaways

- **Adopt/update appropriate policies, consistent with your culture and organizational philosophies.**
- **Consider messaging opportunities to acknowledge support for differing perspectives and political activities outside of work during the election season, and remind employees about applicable policies and general expectations for making sure that those activities don't interfere with the workplace, customer/vendor relationships, and operations.**
- **Where issues arise, enforce your policies with consistency, don't be selective or overreactive.**
- **Leadership should model the ideal/set a good example.**



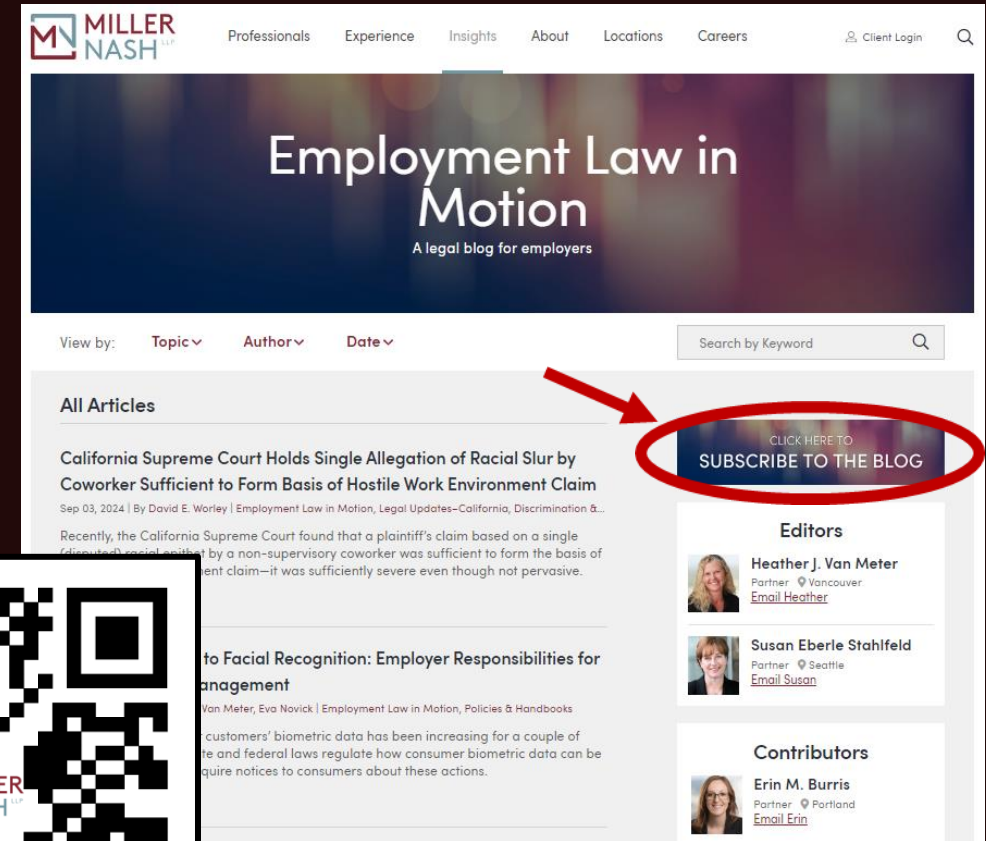


Q&A

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# Miller Nash's Annual Employment Law Seminar

**Tuesday, November 19, 2024**

**In person at Oregon Convention Center and virtually on Zoom**

**8:30 am – 12:30 pm**

**SHRM, HRCI, and CLE credits will be applied for**



## **Topics include:**

- **Federal/state/local updates**
- **NLRB overview and update**
- **Employee relations in a divided world**
- **Documentation best practices**
- **Bullying, workplace safety, and violence prevention**



# An Evening with Nite Wave



- **Tonight!!!**
- **Doors at 7:30 pm; show begins at 8 pm**
- **Stop by our booth for some retro swag**





*Thank You!*

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