

Want to Talk Politics? Then Take it Outside Workplace.

By Holly Culhane, Contributing Columnist



A client called me the other day. She said her head was ready to explode. She needed help.

She had two employees who were about to go to blows over the upcoming presidential election. One was a veteran employee known for having a big mouth. The other was a newly-hired young woman.

The big mouth, who I will call Marty, holds conservative views. But aside from that, he just likes to needle people. The young woman, who I will call Beth, is quiet spoken. She seldom shares her views on political issues.

The problem began this spring, after talk show host Rush Limbaugh lambasted Georgetown University law student Sandra Fluke in the wake of a national debate over the administration's Affordable Care Act, or Obamacare.

Marty started needling Beth over women's reproduction issues. He contended that Rush was right: Women who wanted to force insurance companies to pay for birth control pills were promiscuous. Marty actually used Limbaugh's words, which many Republicans and Democrats found offensive.

Marty kept at it, poking his young co-worker, suspecting she might share Fluke's views, or at least her gender and age bracket. Finally Beth reached her boiling point. She verbally unloaded on Marty. And the workplace has never been the same.

Almost every day, Marty and Beth go at it – sniping at each other and arguing about their candidates, as well as nearly every twist and turn in the election. Meanwhile, their co-workers have been caught in the cross fire, hoping that the pair would just shut up.

When my client called me last week, she had a simple question: Can she fire them both?

My response: You may be able to fire Marty and Beth. But proceed cautiously.

Some employees wrongly believe that their on-the-job political speech is protected by the First Amendment to the U.S. Constitution.

Actually, the First Amendment protects speech and expression from government control. Ironically, that is why employees of government agencies enjoy greater protection than employees of private companies. Public employers are "the

government.” As a result, the political speech of their employees is somewhat protected by the Constitution.

Private employers have greater latitude regarding banning political speech in the workplace. However a few states, including California, have extended protections to employees of private companies. For example, California provides some protections for political activities outside the workplace. However, employers cannot attempt to coerce or influence an employee to follow or not follow a course of political action or activity.

In the case of Marty and Beth, other factors come into play. Depending upon the company policies that are in place and the record of enforcement, issues may be considered beyond the political nature of the speech. And curbing Marty’s and Beth’s behavior may be best handled with disciplinary action, rather than firing.

Did Marty create a “hostile work environment” for Beth by constantly needling her about “women’s issues?” Is the couple’s fighting creating a hostile work environment for co-workers? How much work time and productivity is being lost to this fighting? Are they using company equipment, such as the email system, to continue their argument beyond face-to-face interactions? Are company policies being violated?

If a company wishes to limit political speech in the workplace, written policies should be developed, with the assistance of an attorney and human resources professional, and employees must be notified. The policies should include use of company equipment and be evenly enforced. Companies may also wish to adopt a “no solicitation” policy to limit the distribution of political material during work hours.

But talking about politics at work can have consequences for employees beyond the risk of discipline.

Colleagues may be offended. Obsessive behavior may result in judgment being questioned. Supervisors who disagree may be alienated. The bottom line: An employee’s inability to balance their political speech at work may have a career impact that is not expected.

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