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**MY EMPLOYEES CAN'T SAY
THAT AT WORK, OR CAN THEY?**

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1

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2

CIVILITY AT WORK



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WHAT WE KNOW

SHRM Survey in 2024—


- 2000 acts of incivility every second; 800 of those in the workplace
- 66% of workers believe incivility reduces productivity
- 59% agree employee moral suffers
- Incivility is correlated with high turnover



4

WHAT CAN WE DO

- Civility starts at the top
 - HR, Managers, Owners—Are You Civil When You Talk to Employees?
 - Avoid yelling, berating, chastising in public
 - Avoid bringing your worst impulses into the workplace
 - Your Not-so-Nice Behavior
 - Your Not-so-Nice Opinions
 - Be Aware, Employees Are Watching You Even when you are off-duty (Social Media)



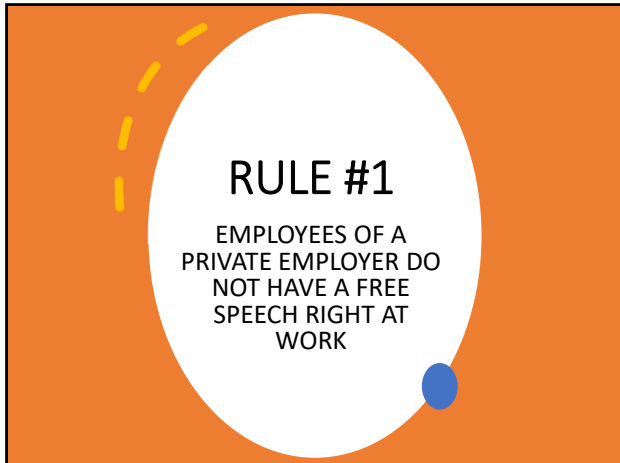
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WHAT ABOUT FREE SPEECH?



6



7



8



9

WHAT'S COVERED?


- Employees have a right to talk about:
 - Wages
 - Hours
 - Terms and Conditions of Employment



10

WAGES

- Sharing their pay rate
- Asking others to share their pay rate
- Complaining about wage rates and asking for raises



11

TERMS AND CONDITIONS OF EMPLOYMENT

- Type of work or hours of work
- Problems with supervisor
- Disagreement with management policies
- Time off
- Safety




12

WHAT'S THE PRACTICAL EFFECT

- Employees are “more protected” than normal when engaging in this type of speech
- Even discipline for outbursts that occur during this type of speech may be protected
- Need to be very careful with discipline for speech that could be considered critical of the workplace
- True Supervisors (those with discretion and authority) are not covered by the NLRB

13

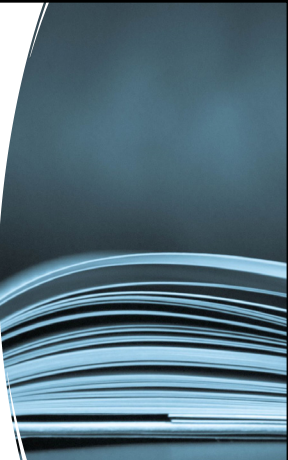
BE CAREFUL ABOUT DISCIPLINE FOR SOCIAL MEDIA POSTS



14

A WORD ABOUT HANDBOOK RULES

- NLRB Current Standard:
 - Rules must be narrowly tailored
 - Employer must have a legitimate and substantial business justification for rules
 - Civility Rules Cannot Infringe on or Be Used to Infringe on Protected Concerted Activity
 - Supervisors Are Less Protected Than CoWorkers



15

EXAMPLE OF OVERBROAD LANGUAGE

- Starbucks Civility Rule too Broad
- “Partners are expected to communicate with other partners and customers in a professional and respectful manner at all times. The use of vulgar or profane language is not acceptable.”
- United Electrical Contractors


Prohibition on “disrespect toward supervision” violates the NLRA



16

OTHER UNLAWFUL LANGUAGE



- “disrespectful” conduct and “language which injures the image or reputation” of the employer
- “[d]iscourtesy to a customer, vendor, or the general public resulting in a complaint or loss of good will”
- Prohibiting “distracting the attention of others,”
- Prohibiting “wasting time...during working hours,” and
- Prohibiting making malicious statements about coworkers or the company.



17

PENALTIES FOR VIOLATION

- Reinstatement
- Backpay
- Reimbursement for financial harms, including job-search and interim employment expenses, with interest;
- compensation for any adverse tax consequences of receiving a lump-sum backpay award; and
- Other Relief-rescission of handbook and publication of notice to employees



18



19

WHAT IS THE BASIC RULE

- Activity that is outside of work hours
- Does not use the employer's equipment, facility or supplies
- Does not interfere with employer's trade secrets, confidentiality for work
- Some restrictions on political activity for certain Public Employees

20

WHAT'S COVERED

- Political Activity
- Recreational Activity
- Union Activity
- Cannabis, Marijuana, Alcohol Use
- Religious Activity Typically Covered

21

WHAT'S THE PRACTICAL EFFECT?



- Cannot Discipline Employees for most activities outside of work
- Do NOT have to allow it to enter the workplace
- Off Duty Politics that Cross into Protected Class Territory Are Really Hard to Deal with
 - Example: the Current Haitian Pet Eating Nonsense

22



POLITICS IN THE WORKPLACE

23

TYPICAL SCENARIO

- June complains to her supervisor that July is posting offensive comments on his Facebook page and is saying offensive things in the office.
- When the supervisor investigates, he finds that these comments and postings all relate to support of a particular candidate over another candidate in their congressional election, BUT that some of these comments include parroting the candidates' negative comments about women, including that a woman's place is in the home, and women should be cooking, child-minding, and taking care of their man.

24

WHAT CAN AN EMPLOYER DO?


- IN the workplace, employer should take action.
 - Limit Discussion
 - Make Topics not Acceptable
 - Issue Discipline for Failure to Comply
- Social Media Posts
 - Focus on the discriminatory statements, images, ideas-NOT the political party or candidate
 - How is this impacting work?



25

THINGS TO WATCH FOR


- Targeting an Existing Employee or Group of Employees
- Intimidation or Refusals to Work with People



26

COMPLAINT DEPARTMENT

NEW YORK WHISTLEBLOWER LAW



TAKE A NUMBER

27

WHAT'S COVERED

- Complaints about a violation of any
 - Law
 - Rule
 - Regulation
 - Executive Order
 - Judicial or administrative decision

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WHAT DOES THIS MEAN?

- Do not retaliate for complaints
- Train Supervisors not to retaliate
- Take action to resolve the issue or explain to employee why it isn't an issue
- Make sure you have the notice posted:
https://dol.ny.gov/system/files/documents/2022/02/ls740_1.pdf

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WHAT ELSE?

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OTHER CONSIDERATIONS

- Anti-Harassment and Anti-Discrimination Laws
- Union Contracts

31

ACTIONS TO TAKE

- Set Expectations
- Promote Awareness
 - Have Conversations About the Kind of Workplace We Want to Work In
- Have Clear Policies within Reason
- Don't Ignore Social Media Issues
- Don't Ignore Complaints—Have Conversations

32

DON'T FORGET. . .



- Update Handbooks for new required policies and amendments
- Annual Harassment Training
- Wage Rate Sheets
- Do a spot check on wage and hour
- COVID Pay Is Still a Thing

33


REMINDER--NEW FEDERAL RULE OVERTIME

EFFECTIVE DATE IS July 1, 2024

- Salary to be exempt from OT increases
 - July 1 from \$684 to \$844/week
 - Jan 1, 2025 to \$1,128/week
- New York Currently
 - \$1,200 for NYC, Nassau, Suffolk, Westchester
 - \$1,124.20 for Rest of State
- Pennsylvania currently \$875 /week



34



**YOUR
QUESTIONS**

35



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36
