

NOVEMBER 2008

## WHY POLITICS IN THE WORKPLACE CAN BE WORSE THAN WORKPLACE POLITICS: *California and Federal Law Regulate Politics in the Workplace*

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The Presidential election is fast approaching, and as political conversations heat up around the state, the nation, and especially the workplace, employers should be aware that both California and federal law restrict employers' conduct when it comes to politics in the workplace.

In California, Labor Code Section 1101 makes it unlawful for an employer to forbid or prevent employees "from engaging or participating in politics or from becoming candidates for public office" or "to control or direct the political activities or affiliations of employees." Moreover, pursuant to Labor Code Section 1102, it is unlawful for a California employer to "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 ... any particular course or line of political action or political activity." While the full extent of these prohibitions has not been defined, it is clear that a California employer may not threaten to discharge or discipline an employee because of his/her political activities or affiliations or to coerce the employee to support a particular candidate or initiative.

Similarly, the Federal Election Campaign Act generally prohibits a corporation from making expenditures for communications to employees expressly advocating the election or defeat of a clearly identified candidate or the candidates of a clearly identified political party in any local, state, or federal election. This prohibition applies to communications with hourly employees, salaried foremen, other lower-level salaried employees having direct supervision over hourly employees, union-represented employees, and former or retired personnel who are not stockholders. Thus, such expenditures may be made *only* to communicate to a corporation's "restricted class," which includes its stockholders and its executive and administrative personnel and their families. "Executive or administrative" personnel, in this context, means individuals paid on a salary basis who have policymaking, managerial, professional, or supervisory responsibilities (other than those specifically excluded above).

A recent incident involving Wal-Mart shows how an employer might run afoul of these laws. Wal-Mart required its store managers and department supervisors to attend meetings at which its human resources managers discussed the proposed Employee Free Choice Act. This proposed legislation, sponsored by Presidential candidate Senator Barack Obama, would allow a union to organize a workforce without an election if more than 50% of the employees have signed

## BREAKING NEWS

### *NEW LAW EASES COMPENSATION RULES FOR COMPUTER PROFESSIONALS*

GOVERNOR SCHWARZENEGGER HAS SIGNED INTO LAW URGENCY LEGISLATION AFFECTING THE "COMPUTER PROFESSIONAL" EXEMPTION. ASSEMBLY BILL 10 ("AB 10"), WHICH TOOK EFFECT IMMEDIATELY UPON ITS PASSAGE, AMENDS CALIFORNIA LABOR CODE SECTION 515.5 TO ALLOW EMPLOYERS TO PAY EMPLOYEES WHO QUALIFY UNDER THE COMPUTER PROFESSIONAL EXEMPTION EITHER ON AN HOURLY BASIS AT THE CURRENT RATE OF \$36 PER HOUR OR ON A SALARY BASIS OF AT LEAST \$75,000 ANNUALLY.

PRIOR TO AB 10'S ENACTMENT, COMPUTER PROFESSIONALS WERE ENTITLED TO BE PAID \$36 PER HOUR, FOR ALL HOURS WORKED, MEANING THAT, EVEN IF THEY WERE PAID ON A SALARY BASIS, EMPLOYERS WERE REQUIRED TO KEEP TRACK OF THEIR HOURS AND TO MAKE ADDITIONAL PAYMENTS IF THE PER-HOUR RATE DIPPED BELOW \$36 IN ANY WORKWEEK. THIS BILL ALLEVIATES THESE BURDENS FOR THOSE WHO MEET THE REQUIREMENTS OF THE COMPUTER PROFESSIONAL EXEMPTION AND ARE PAID AT LEAST \$75,000 PER YEAR. ALTERNATIVELY, EMPLOYERS MAY CONTINUE TO PAY COMPUTER PROFESSIONALS ON AN HOURLY BASIS. WHEN PAID HOURLY, NO PREMIUM PAY IS REQUIRED FOR HOURS OVER 8 IN A DAY OR 40 IN A WEEK; HOWEVER, EVERY HOUR, INCLUDING OVERTIME HOURS, IS PAID AT THE REGULAR RATE OR \$36 OR MORE PER HOUR. EXCEPT FOR THOSE WORKING PART-TIME, IT WILL ORDINARILY BE LESS COSTLY AND BURDENSOME TO PAY COMPUTER PROFESSIONALS ON A SALARY BASIS.

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a union authorization card indicating a desire to be represented by the union. According to *The Wall Street Journal*, Wal-Mart's human resources staff linked the Act's passage to Senator Obama and other Democrats winning in the upcoming election. They also noted to these employees the downsides for workers if Wal-Mart's stores became unionized. These meetings led to the filing of a complaint against Wal-Mart with the Federal Election Commission.

Therefore, there is a risk under both state and federal law whenever an employer attempts to influence its employees to support a particular candidate or political party. This risk exists not only with respect to formal communications sanctioned by the company, but even in informal communications made by supervisors to employees. Thus, employers would be wise to tread carefully and consult legal counsel before attempting to involve its employees in political matters or to regulate any conduct related to employees' political activities. Moreover, particularly during an election year, heated political discussions in the workplace could implicate policies prohibiting discrimination and harassment in the workplace. For example, statements by management or co-workers about a candidate's race, gender, or age or about hot button issues such as illegal immigration, terrorism, or gay marriage could easily be intended or perceived in a derogatory manner.

Finally, when election day arrives, if an employee does not have sufficient time outside of working hours to vote in a statewide election, California Elections Code Section 14001 requires that the employee be allowed to take off up to two hours of working time to vote without loss of pay. Unless a different time is mutually agreed to, this time off may occur at either the beginning or the end of an employee's shift, whichever allows the most free time off for voting and the least time off from working. An employee is required to notify an employer if he or she needs such time off for voting at least two working days in advance of the election date. The employer is required to post these requirements in a conspicuous place at least 10 days before any statewide election. Notices may be downloaded in both English and Spanish from the California Secretary of State's website at [http://www.sos.ca.gov/elections/elections\\_tov.htm](http://www.sos.ca.gov/elections/elections_tov.htm).

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**Q:** UNDER FEDERAL LAW, IS CONDUCTING A MEETING ON COMPANY TIME AN "EXPENDITURE"?

**A:** YES. "EXPENDITURE" INCLUDES ANY PURCHASE, PAYMENT, DISTRIBUTION, LOAN, ADVANCE, DEPOSIT, GIFT OF MONEY, OR ANYTHING OF VALUE MADE BY ANY PERSON FOR THE PURPOSE OF INFLUENCING ANY ELECTION FOR FEDERAL OFFICE. CONDUCTING A MEETING ON COMPANY TIME COULD BE CONSTRUED AS A DONATION OF EMPLOYEE TIME, VALUED BY THE COMPENSATION THE EMPLOYEES ARE RECEIVING DURING THE TIME SPENT AT THE MEETING.

**Q:** WHILE I UNDERSTAND THAT I MAY NOT THREATEN DISCHARGE, UNDER CALIFORNIA LAW MAY I REWARD EMPLOYEES WITH A BONUS OR TIME OFF IF THEY AGREE TO VOTE FOR A PARTICULAR CANDIDATE OR PARTY?

**A:** NO. VOTE BUYING IS UNLAWFUL UNDER CALIFORNIA LAW. CALIFORNIA ELECTIONS CODE SECTION 18522 EXPLICITLY PROHIBITS PAYING MONEY OR OTHER CONSIDERATION (SUCH AS TIME OFF) TO REWARD A VOTER FOR VOTING FOR A PARTICULAR PERSON OR MEASURE. IN ADDITION, SUCH A PRACTICE LIKELY VIOLATES CALIFORNIA LABOR CODE SECTION 1101'S PROHIBITION ON "TENDING TO CONTROL OR DIRECT THE POLITICAL ACTIVITIES OF EMPLOYEES" AND ANY SUCH PAYMENTS WOULD LIKELY BE CONSIDERED AN EXPENDITURE UNDER FEDERAL ELECTION LAW. PLUS, EVEN IF SUCH A PRACTICE WERE LAWFUL, VOTING RESULTS ARE CONFIDENTIAL AND IT WOULD BE IMPOSSIBLE TO DETERMINE WHETHER OR NOT AN EMPLOYEE ACTUALLY VOTED FOR A PARTICULAR CANDIDATE OR PARTY.

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