

# The Political Landscape

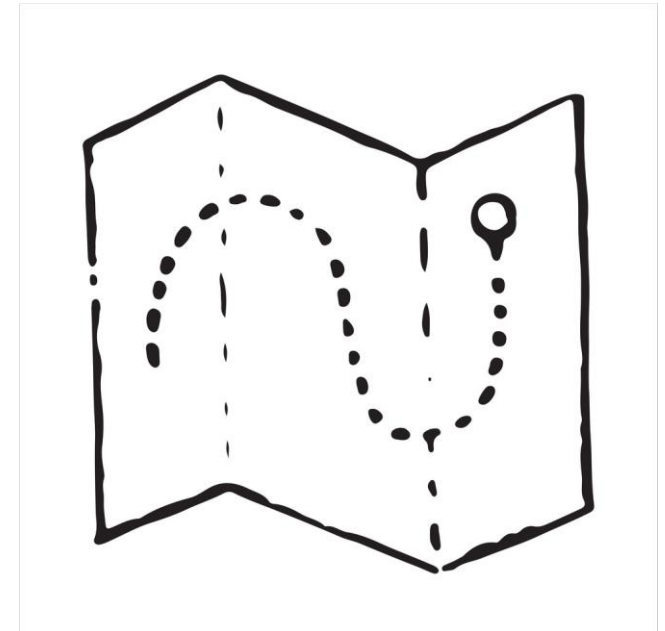
Leading into an Election Year

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# Process Map The Next Hour+

- 1. Political, legislative, and governmental agency updates
- 2. Upcoming political schedule and social issues
- 3. Best practices on civility



# U.S. Department of Labor



- Notice of Proposed Rulemaking
- Raise minimum salary for administrative, professional, executive exemptions
  - 35th percentile in the lowest-wage Census Region (currently the South)
  - \$684 per week (\$35,568 annualized) → \$1,059 per week (\$55,068 annualized)
  - DOL will use the most recent data when final
- Proposes to raise minimum salary for highly compensated exemptions
  - 85th percentile of full-time salaried workers nationally
  - \$107,432 → \$143,988
  - DOL will use the most recent data when final
- Automatic updates every three years

# National Labor Relations Board

August 24-31

- Cemex Construction
- New rule speeding up elections
- Intertape Polymer Corp.
- Wendt Corp. & Tecnap LLC
- Miller Plastic Products
- American Federation for Children, Inc.

Prior decisions

- American Steel Construction, Inc.
- Bexar County II
- Lion Elastomers
- Thrivy & Noah's Ark Processors



# National Labor Relations Board Contd.

- Severance agreements
  - McClaren McComb
  - If an employer's conduct can even reasonably be said to interfere with the employees' rights, the conduct may constitute an unfair labor practice
  - Non-disparagement clauses - "so disloyal, reckless or maliciously untrue as to lose the Act's protection"
  - Confidentiality clauses - must be narrowly drafted to only include protected information such as trade secrets
- Handbook
  - Stericycle
  - The NLRB will evaluate work rules by determining whether the general counsel established that the work rule *could* reasonably be interpreted to have a coercive meaning, even if a contrary, noncoercive interpretation of the rule is also reasonable
  - Analysis from the standpoint of an employee "economically dependent" on the employer, not a "reasonable employee"

# High profile union attention

- SAG-AFTRA strike
- Starbucks
  - 340 election victories the last
  - Over several years, NLRB has brought 100 separate cases, which together allege more than 1,000 illegal actions, mostly retaliation
- UAW strike
- 2023 Gallup Poll - 67% of Americans approve of unions
  - Fifth straight year this reading has exceeded its long-term average of 62%



# SCOTUS

- Groff v. DeJoy
- 303 Creative
- Harvard/UNC
- Glacier Northwest
- Muldrow v. St Louis



# Pennsylvania Human Relations Commission

- PHRC expanded the regulatory definitions of “sex,” “race,” and “religious creed”
- The new definitions do not extend the law
  - Federal and state law already protected these categories





# Non-competes

- Federal Trade Commission – Proposed Rule
  - January 2023 proposed rule to eliminate all restrictions on post-employment
  - Received nearly 27,000 comments on the draft rule proposed in January
  - Commission expected to vote in April 2023 on the final version
- National Labor Relations Board – Guidance Memo
  - Must be “narrowly tailored to special circumstances justifying the infringement on employee rights”
  - Avoiding competition, retaining employees, or protecting special investments in training employees are NOT narrowly tailored
  - Employers may protect legitimate business interests, proprietary, and trade secret information “by narrowly tailored workplace agreements” that protect those interests
    - Going after first agreement in Ohio

# Raises to some minimum wage workers

- U.S. Department of Labor
  - Construction workers on projects that receive federal funding must be paid based on the prevailing wage of an area... not less than the amount paid to 30% of workers in the area
- President Biden's executive order
  - Minimum wage for federal contractor employees became \$16.20

# Federal Speak Out Act

- Prohibits non-disclosure and non-disparagement clauses related to allegations of sexual assault and harassment and that are entered into “before the dispute arises”
- Employers can continue to include enforceable non-disclosure and non-disparagement clauses in agreements resolving allegations of sexual harassment
- Applies to employment agreements, confidentiality agreements, NDAs

# Pending federal bill to raise minimum wage

- “Raise the Wage Act”
  - A group of Democratic lawmakers propose a \$17 minimum wage by 2028
  - Three steps
    - 1. Raise the minimum wage to the \$17 floor by 2028
    - 2. Tipped and disabled workers would receive the full minimum wage
    - 3. Scheduled future increases

# Pending state bill to raise minimum wage

- House Bill 1500
  - \$11 per hour in 2024
  - \$13 an hour in 2025
  - \$15 an hour in 2026
  - Increases each year thereafter would be tied to the consumer price index

# Part 2: Political discourse !





**ALL I SAID WAS**



**WE HAVE WAY TOO MANY  
POLITICAL MEMES ON HERE**

[imgflip.com](https://imgflip.com)



**THAT FACE YOU MAKE**



**WHEN SOMEONE MENTIONED POLITICS  
IN A NON POLITICAL TOPIC**

imgflip.com

**I DON'T ALWAYS  
MAKE POLITICAL MEMES**



**BUT WHEN I DO, EVERYBODY  
ELSE GETS OFFENDED**

imgflip.com

**IF YOU COULD STOP FIGHTING  
OVER POLITICAL PARTIES**



imgflip.com

**BRACE YOURSELVES**

**THE PROPAGANDA IS COMING**



quickmeme.com

# What is ahead?

- September 27, 2023, Republican Primary debate
- November 7, 2023, Pennsylvania municipal election day
- Jan 15, 2024, Iowa primary caucus
- April 23, 2024, Pennsylvania primary caucus
- July 15-18, 2024, Republican national convention
- August 19-22, 2024, Democratic national convention
- November 5, 2024, Election day
- December 17, 2024, Electors cast their vote

# Inevitable discourse

- Transgender rights, gender identity, gender transition
  - Preferred pronoun policies
  - Bathroom rules
  - Athletes in sports
- Abortion
  - Dobbs v. Jackson Women's Health Organization
- Education
  - Books in schools
  - School board elections
- Immigration

Job Applicants Please Note:

We do not hire  
**LIBERALS.**

This is not because we disagree  
with their political views.

It is because working here requires  
superior reasoning, logic and  
reading comprehension skills,  
and in our experience,  
Liberals are deficient in those areas.

We have found that they make  
decisions based on their emotions,  
not logic. This would be very  
detrimental to our business.

We regret any inconvenience this may cause.

# Reasonable minds can disagree



Insperity

<https://www.insperity.com> › Blog

## Talking Politics At Work – Why It's Bad And How To Prevent It

Protect **employees'** **political** expression and their right to express **political** opinions; Prohibit employers from discriminating against them on the basis of ...



Harvard Business Review

<https://hbr.org> › 2021/07 › dont-ban-politics-at-work

## Don't Ban "Politics" at Work

Jul 7, 2021 — ... **politics** in the **workplace**, and according to Glassdoor, 60% of U.S. **employees** believe that **discussing politics at work** at all is unacceptable.



# Pros and cons to banning

- Pros
  - Legal
  - Straight forward policy
- Cons
  - May create a rebellious staff
  - Complaint child
    - Administrative nightmare to enforce
  - Adverse action against good employees
  - Company may come off as one incapable of difficult, constructive conversations

# Inherently embrace it with protections

- Policies & Procedures / Handbook
  - EEOC statement
  - Anti-harassment statement
  - Work rules
  - Code of conduct / violence
  - Criminal activity
  - Non-solicitation
  - Social media
  - Corporate speech
  - Company-branded equipment
  - Open door policy
- What about a specific policy about political discussion?



# Get on the forefront

- Recognizing that it is an election year
- Recognize that people have different ideas
- Encourage constructive involvement in local politics
- Encourage constructive involvement in local tribunals
- Inform employees of different avenues to voice opinions
- Acknowledge there are no right or wrong answers

# Is there a legal concern?

- Briskman v. Akima
  - Photo went viral
  - Briskman used it on her social
  - Akima terminated
- Briskman sued for wrongful termination in Virginia
- Company said she was at-will and violated company social media policy
- Company won
- Now an elected official



# Phillips v. Starbucks

- June 2023
- Facts
  - Two black were arrested at Starbucks for alleged loitering in 2018
  - They claimed to be waiting for a business associate
  - Media outrage
- Phillips, Regional Manager, was not involved in the arrests but was fired
- She claimed she was fired for being white. She claimed it was “an effort to convince the community that it had properly responded to the incident”
- Starbucks said she demonstrated lack of leadership during crisis
- Jury found she was a white scapegoat; awarded over \$25 million in damages

# Most political speech is NOT protected.....

- No protected-category-based scapegoats!
- Concerted activity
  - Minimum wage
  - State paid leave requirements
  - Work weeks
  - Union support
- Protected activity?
  - Black Lives Matter shirt? All Lives Matter shirt?
  - Me too shirt?
  - Religious Beliefs
  - Immigration experience

# Best practices

1. Stop any disruptions that can negatively impact the working environment
2. Apply the rules consistently
3. Have managers set a good example
  - No political discussion from managers
4. Listen to what your employees are saying
5. Steer employees back to work if you hear a escalating discussion
6. If you have a TV in the backroom, turn off news channel

