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BIG LAW REDEFINED.
From Tweets to Termination
Understanding Employee Speech Rights in the Digital Age
GTLAW.COM
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Speakers



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● GREENBERG TRAURIG LOCATION

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Agenda

- What is protected political speech?
- What is protected in terms of off-duty conduct of employees?
- When is an employee off duty?
- How does the NLRA factor in?
- How do anti-harassment laws impact the analysis?
- How does freedom of religion impact the analysis?

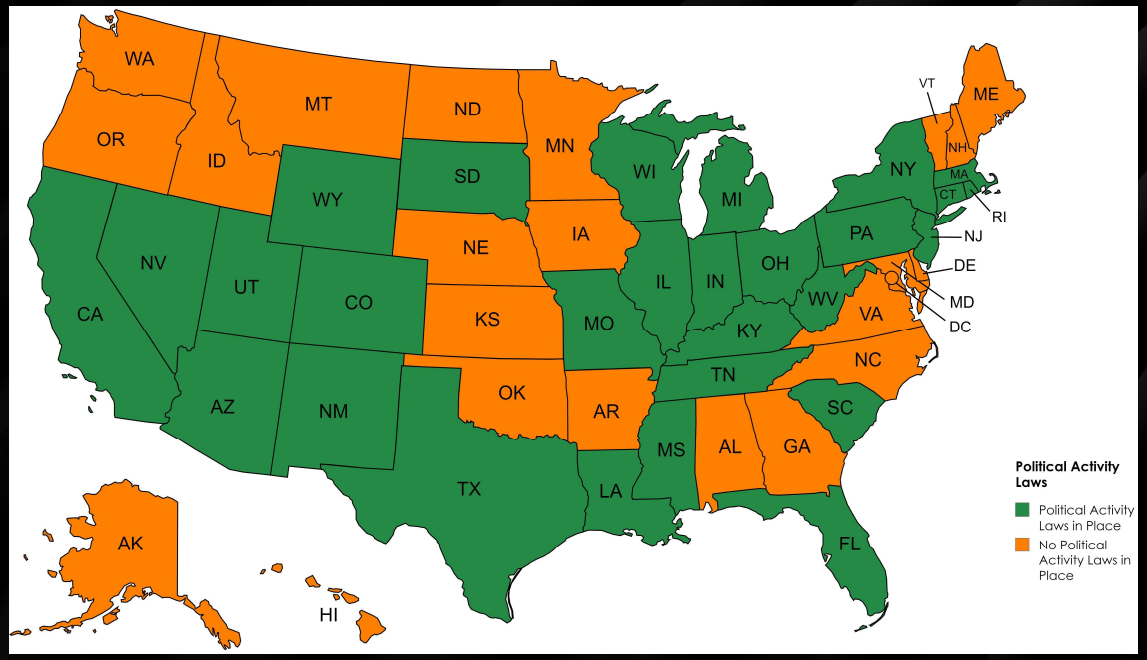
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Political Speech

- Is the employer or employee located within a state that protects political speech or affiliation?
- Are discrimination or harassment policies implicated?
- Could the activity violate criminal law?

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States that Protect Political Activities



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Arizona

- Employers may not coerce employees to support or not support a referendum or recall, include in compensation materials any statements to influence the political opinions or actions of employees, or display any notice within 90 days before an election that directly or indirectly attempts to influence employees to support or not support a particular candidate by stating that if a candidate or ticket succeeds there will be consequences in the workplace.

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Social Media and Political Speech

Background:
Maria, an employee at a large tech company, posts a series of tweets on her personal account, after work hours, voicing strong political opinions about a controversial election. Some coworkers see the tweets, feel uncomfortable, and report them to HR, claiming the posts are divisive and reflect poorly on the company.

Discussion Points:

- Is Maria's speech protected under the First Amendment or any state law?
- Does the company have the right to discipline her for off-duty conduct?
- Does it matter if Maria's X bio mentions her employer?
- How would the analysis change if Maria's tweets targeted a protected group or could be construed as harassment?
- What if Maria's posts could be connected to workplace morale or public reputation?

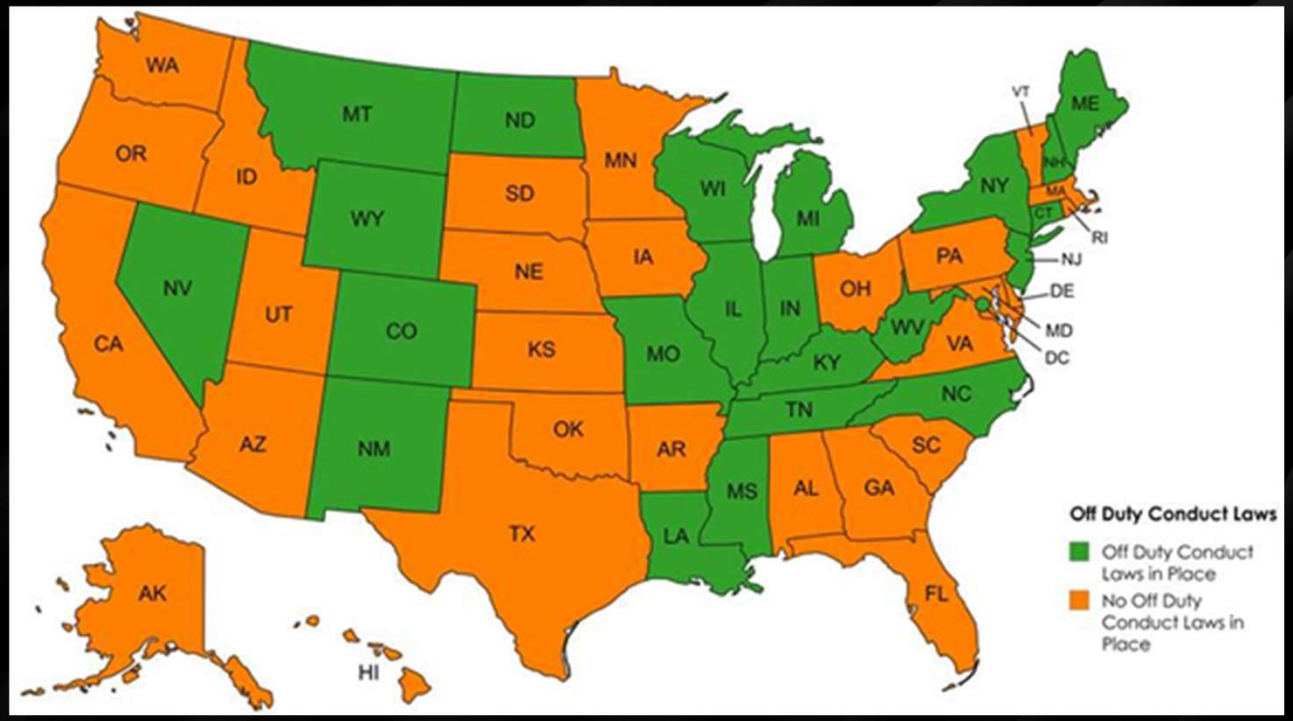
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Is it Off-Duty Conduct?



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States That Protect Off-Duty Conduct



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Considerations- Employee Speech

- Is the conduct in the workplace or outside the workplace?
- Is the conduct during working hours?
- Is the employer public or private?
- Subject matter of speech - NLRA

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Speech ok or not?

- Is the statement on a private or public website or app?
- Does the statement concern protected or concerted activity
- Was the employee working when the statement was made?
- Did the statement identify the employer?
- Who reported the statement to HR/the employer?

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Participation in Protests

- Arrests
- Violent conduct
- Peaceful conduct that appears in media

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Social Media Posts

- Is it a personal page?
- What does the policy say?
- How are other employees (or other constituents) affected?
- Discriminatory or harassing?
- About terms and conditions of employment?

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Viral TikTok Video Filmed at Work

Background:
Taylor, a customer service representative, films a humorous TikTok video during their break in a company uniform, poking fun at common customer complaints. The video goes viral, with thousands of views and some negative comments about the company's customer service.

HR Discussion Points:

- What are the risks to company reputation from employee-created social media content?
- Should HR discipline Taylor for filming at work or posting in uniform?
- How can HR clarify expectations regarding social media use on company property and in uniform?
- What training or reminders should HR provide about the company's brand and social media guidelines?

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Employee's Social Media Post Deemed Offensive by Coworkers

Background:
Dana, an employee, shares a meme on Instagram that some coworkers find racist and offensive. The post is from Dana's personal account, but coworkers recognize her as part of the company and report it to HR, saying it creates a hostile work environment.

HR Discussion Points:

- When does off-duty social media activity trigger a workplace investigation?
- How should HR balance Dana's right to free speech with the company's responsibility to maintain a respectful workplace?
- What steps should HR take if employees feel unsafe or unwelcome due to a coworker's online conduct?
- How can HR proactively address diversity, equity, and inclusion concerns that arise from social media conduct?
- How can HR encourage internal feedback and address underlying concerns before they go public?

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Off-Duty Conduct and Company Reputation

Background:
A mid-level manager, Alex, attends a public protest on a weekend, wearing a shirt with an extreme slogan. Photos of Alex at the protest go viral, and several clients voice concern about being associated with the manager's views. Employees are divided—some support Alex's right to protest, others fear reputational damage.

Discussion Points:

- Can the company take disciplinary action against Alex for off-duty conduct?
- What if Alex did not mention or reference the company in any way?
- How should HR balance employees' rights with the organization's reputation and client relationships?
- What policies or guidelines should be communicated regarding public conduct?
- How should HR respond to internal and external feedback?

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Religious Expression vs. LGBTQ Inclusion

Background:
Sam, a supervisor, is outspoken about their religious beliefs, occasionally referencing their faith in workplace conversations and displaying a religious symbol at their desk. During Pride Month, Sam shares religious literature with coworkers and states, "I believe marriage should only be between a man and a woman." Several LGBTQ employees report feeling uncomfortable and discriminated against.

HR Discussion Points:

- When does religious expression cross the line into harassment or discrimination?
- How should HR respond to complaints from LGBTQ employees while respecting Sam's religious rights?
- What are the legal boundaries regarding religious accommodation and anti-discrimination laws (Title VII, state laws)?
- How can HR foster a workplace culture that respects both religious beliefs and LGBTQ inclusion?
- What policies and training can HR implement to clarify expectations for respectful expression and inclusion?

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Employee Speech or Activity that Conflicts with Mission

- What if an employee is speaking or otherwise acting contrary to the core mission of the employer?
- What if the employee is speaking or acting inconsistently with the values of the employer?

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Off-Duty Speech on Social Media About Company Diversity Initiatives

Background:
Jordan, an employee, posts on their personal Facebook page after hours, criticizing the company's new diversity and inclusion program, stating that it "prioritizes certain groups over others." The post is widely shared among coworkers, some of whom feel offended and excluded.

HR Discussion Points:

- Is Jordan's speech protected as off-duty conduct or could it violate company policy?
- How should HR address complaints from employees who feel targeted or excluded by Jordan's post?
- What are the best practices for addressing divisive social media speech that references company initiatives?
- How can HR reinforce diversity and inclusion while respecting free speech?
- Should HR update its social media policy or provide additional training?

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Employee Tagging Company in Controversial Posts

Background:
Chris frequently tags the company's official account in personal posts expressing strong opinions on polarizing social and political issues. Some customers and coworkers complain, saying the posts are offensive and imply the company's endorsement.

HR Discussion Points:

- What are the risks when employees tag the company in personal social media posts?
- Can HR require employees not to tag or mention the company in non-work-related posts?
- How can HR clarify boundaries between personal expression and perceived company endorsement?
- What should your social media policy say about tagging, branding, and representation?

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Best Practices

- Policy
- Acknowledgment of Policy
- Training on Policy
- Acknowledgment of Training

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Best Practices (Contd.)

- Case-by-Case Basis
- Be Aware of Changing State and Federal Law
- Plan in advance for potential issues

Questions?



Thank you for joining!