

Littler[®] Compliance **HR**

Politics in the Office: Infinitely Spookier than Halloween



October 31, 2024

Today's Webinar Host



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Marketing Director

ComplianceHR

Who We Are



- Technology Platform
- Infrastructure enterprise



- Subject matter expertise
- Knowledge management team
- Case databases



What we do:
Deliver expert guidance in a fraction of time and cost vs traditional methods

Compliance HR



PolicySmart™

Create and maintain an up-to-date and legally compliant employee handbook



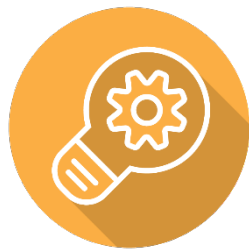
Navigator Independent Contractor

Remove risk in determining Independent Contractor status



Navigator Overtime

Determine if an employee is exempt or non-exempt



The Reference Center

A Comprehensive Solution for Employment Law and Common HR Compliance Questions



The Document Center

Efficiently generate state and federal compliant documents throughout the employee lifecycle



Our Most Popular Solutions



ComplianceHR
PolicySmart™
Changing the way companies create and maintain compliant handbooks

Creating and maintaining compliant handbooks is a daunting task. Your company's employee handbook is an invaluable tool that helps shape company culture, communicate operational policies, and minimizes the risk of employment-related legal liability. A well-thin and legally compliant handbook is essential to keeping the HR process running smoothly, and most employers would agree that keeping up with federal, state, and local employment laws can seem overwhelming.

PolicySmart™ takes handbooks to the next level.

PolicySmart™ is an intuitive handbook compliance tool that provides employers with national and state specific templates, a unique compliance timeline, and so much more.

Fueled by the subject matter expertise of Littler, the world's largest employment law firm and built on Nauto's AI-powered platform, PolicySmart™ allows users to easily create and maintain legally compliant handbooks that are cost effective, up-to-date, and delivered on-demand.

- Federal and State Compliant Templates:** A comprehensive library of federal and state-specific templates, as well as policy templates that are fully customizable, depending on your needs and operational needs.
- Innovative Compliance Timeline:** Provides an up-to-date timeline of important legal changes that will soon take effect in your selected jurisdictions, helping to ensure that policies are updated at the right time.
- Handbook Policy Checklists:** Give access to jurisdiction-specific checklists that tell employers which policies are required by law to appear in their handbook and who is covered by each policy.
- Automated Monthly Emails:** Receive a summary and analysis of relevant legal developments that impact your workplace, with guidance on how to revise policy language.



ComplianceHR
Reference Center
The Comprehensive Solution for Employment Law and Common Compliance Questions

Last year, thousands of employment law requirements were created and overhauled. Maintaining compliance across all jurisdictions is an incredibly difficult feat, but the Reference Center is here to help.

Answer your compliance questions with the Reference Center

ComplianceHR is committed to innovation. To better suit your workflow, we have created the Reference Center. This solution provides you with a single way to answer your compliance questions, easily find content on several employment law topics, and even provide deeper content that bridges multiple employment law topics.

Your organization needs a proactive strategy instead of a reactive approach to compliance. The Reference Center provides state and local information for a variety of topics, such as final pay, FMLA, minimum wage, predictive scheduling, and workplace posters, among many others.

Fueled by the subject matter expertise of Littler, the world's largest employment law firm, the Reference Center is a critical tool for your HR and legal teams.

- Local, State and Federal Information:** A comprehensive library of state and national information that bridges a variety of compliance topics to ensure you're able to access important data.
- Wide Range of Compliance Topics:** From COVID-19 to final pay, FMLA to rate changes, pay frequency to an call, organizations of any size and in any sector can benefit from this information.
- Streamlined Workflow:** The Reference Center is designed to help people across your organization quickly find answers to their questions, whether they're on a centralized legal team or an HR team distributed across the country.

PolicySmart provides you with:

- Federal and state-compliant templates
- Innovative compliance timeline
- Handbook policy checklists
- Automated twice monthly legal update emails

The ComplianceHR Reference Center provides you with:

- Local, state and federal information
- Streamlined workflows
- Wide range of compliance topics
 - Leave, final pay, FMLA, minimum wage, and more

When coupled, these two solutions provide you with comprehensive compliance program support

Sign Up for a Demo

Three ways to sign up for a demo:

1. Reply “Yes” to the on-screen poll
2. Visit our website: [Compliancehr.com](https://compliancehr.com)
3. Email our team at demo@compliancehr.com

Benefits of a custom demon:

- Discuss your organization’s requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies

ComplianceHR Demo & Free Trial:

<https://compliancehr.com/webinar-demo/>

Resources

[Compliance HR - Demo & Free Trial](#)
[State-by-State CLE Guide](#)
[BeaconLive - How to Access Certificates](#)

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Agenda

- 🦇 Impacts of Politics in the Workplace
- 🦇 The Legal Landscape
 - 🦇 Freedom of Speech and Expression at Work
 - 🦇 State Laws Regulating Political Activity
 - 🦇 Anti-discrimination Concerns
 - 🦇 National Labor Relations Board (NLRB) Concerns
- 🦇 Examples
- 🦇 FAQs

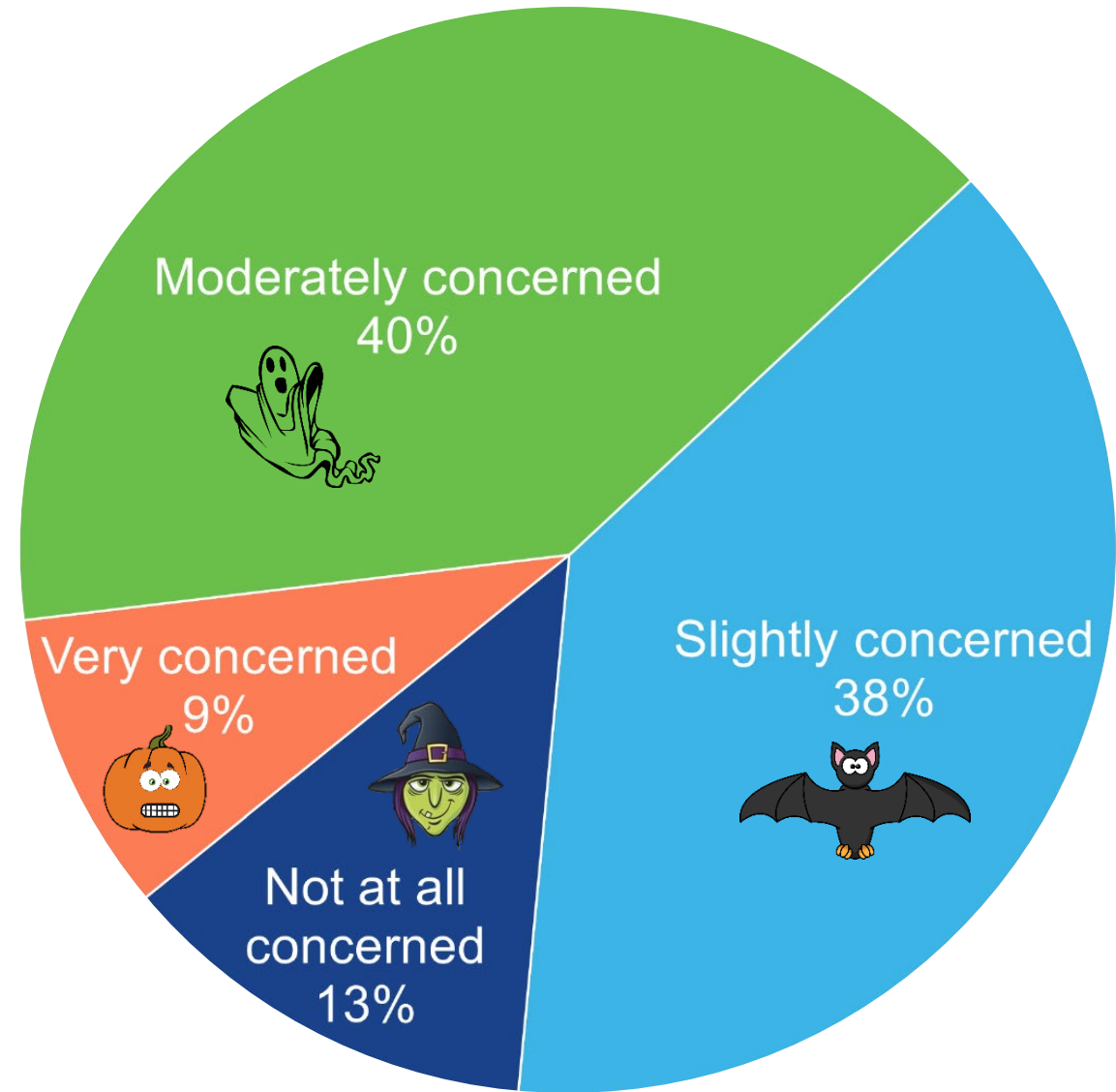


The Growing Costs of Workplace Incivility

- \$1.2 billion per day in reduced productivity due to uncivil behaviors at work.
- Average productivity loss of 31 minutes per occurrence.
- \$828 million per day due to absenteeism caused by uncivil behaviors at work.
- Average of 1.5 days away from work per month.
- 49% of US workers reported experiencing or witnessing incivility weekly.



To what extent is your organization concerned with managing divisive political and social beliefs among employees leading up to the 2024 election?



Politics in the Workplace

“Hot Button” Issues

- 2024 Election
- Climate Change
- Foreign Wars (Gaza, Ukraine)
- Gun Violence
- Immigration
- Racial Justice
- Reproductive Freedom
- LGBTQIA+ issues

Workplace Spillovers

- Water cooler conversations
- Pins
- Clothing
- Hats
- Posters and signs
- Time off from work to vote/campaign/march/rally
- Social media posts

Potential Negative Impacts

- Productivity
- Employee focus
- Employee morale
- Vendor relationships
- Customer service
- Harassment complaints
- Brand implications & public perception



In the Workplace

- What is the “workplace”?
 - Social media
 - “Off-duty” conduct
 - Interactions with third parties
- What is the impact on the workplace?





Legal Framework



Freedom of Speech and Expression at Work

- First Amendment generally applies only to government regulation and censorship of speech.
- First Amendment does not prohibit private employers from regulating political speech and expression at work.
- Statutory law may limit employers' ability to restrict employee speech:
 - National Labor Relations Act (NLRA).
 - State laws (e.g., California and Connecticut).



Contributions



- Companies can generally spend as much money as they want to influence elections
- However, federal contractors are barred from making any contribution (or promising to make a contribution) to:
 - Any political party, committee, or candidate for federal office
 - Any person to any political purpose or use



Freedom to Vote

- Federal crime to:
 - Interfere with ability to vote for federal candidates or to coerce to vote in a specific way
(18 U.S.C. § 594)
 - Bribe/compensate to vote in a certain way
(18 U.S.C. § 597)



State Laws Regulating Political Activity

- California: Prohibits discrimination based on political association.
- D.C.: Prohibits discrimination for belonging to or endorsing a political party.
- Massachusetts: Prohibits coercion of employees to vote a certain way or take a certain political stance. Punishable by fines and imprisonment.
- New York: Prohibits discrimination based on off-duty political activities.
- Utah: Protects “expressive activity” outside of work regarding political or personal convictions.



National Labor Relations Board Concerns

- The National Labor Relations Act (NLRA) protects employees who engage in concerted activity for purposes of “mutual aid or protection.”
- “Mutual aid or protection” means that employees may organize as a group to “improve their lot” outside the employer-employee relationship.
- NLRA restricts an employer’s right to limit non-supervisory employees’ communications about wages, hours, and other terms or conditions of employment.
- Contrary to popular belief, NLRA applies to unionized and non-unionized non-supervisory employees.



Captive Audience Bans

- Growing state trend
- Ban employers from:
 - Taking adverse action for refusing to attend or participate in employer-sponsored meetings or
 - Requiring employees to listen to employer opinions on “religious” or “political matters”



Anti-Discrimination Concerns

- Discrimination based on an individual's actual or perceived political party / affiliation is not covered by federal EEO laws.
- However – if a political discussion subjects an individual to inferior terms and conditions of employment due to their actual or perceived protected class, it may implicate federal EEO protections.
 - Consider whether political discussion involves race, color, sex, national origin, religion, age, disability, etc.
 - Political discussion may suggest bias (age-related comments, immigration-related comments, etc.)



EEO and NLRA Tension



NLRB has chosen to protect
as concerted activity
employee speech and
actions...



That some other employees
could find harassing or
discriminatory.



Post *SFFA v. Harvard*

- “Reverse” discrimination lawsuits
- Shareholder demands
- Open letters from elected officials

Emphasize inclusion

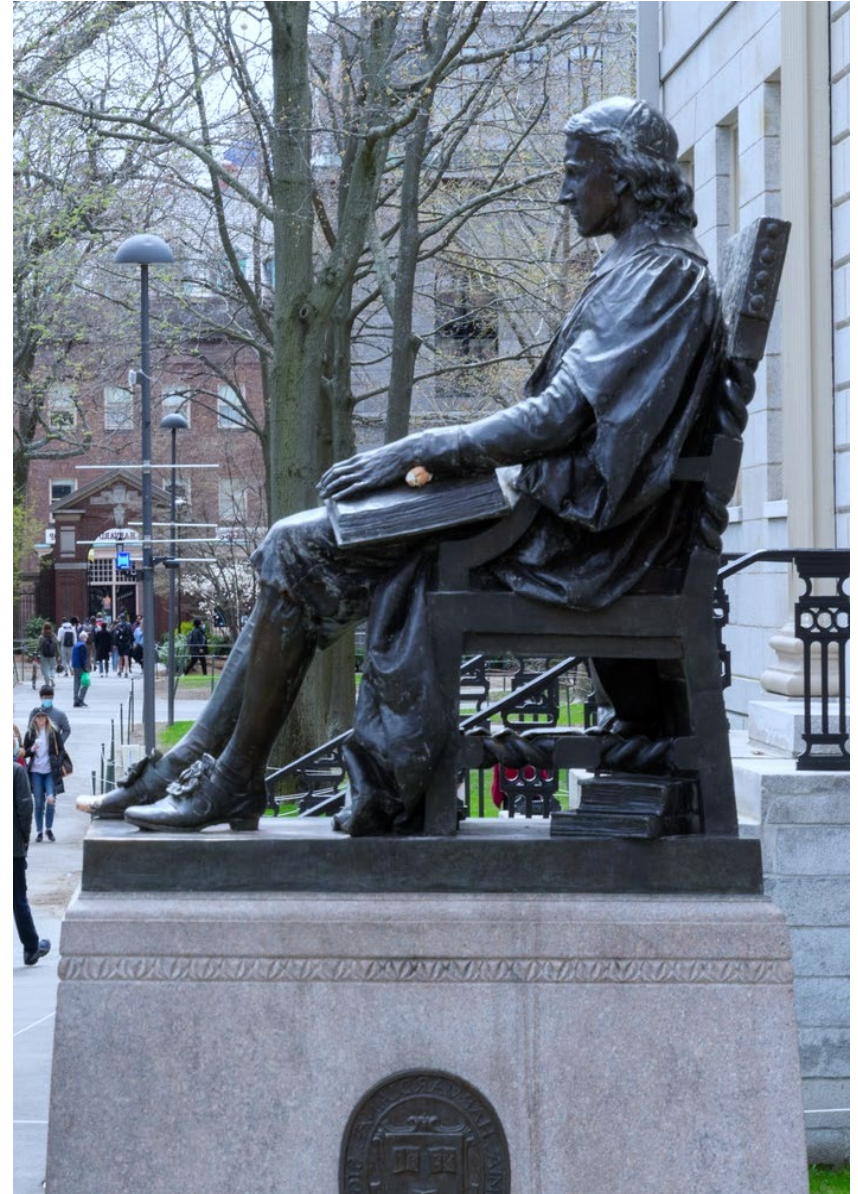


Muldrow v. City of St. Louis

**SCOTUS decision issued on
April 17, 2024**

Employees do not need to
suffer “significant” harm to
state a claim of discrimination
under Title VII

*SCOTUS’ ruling may mean that
discrimination claims that
would have failed in the past
for lack of “tangible harm” will
now be allowed to proceed*



Politics + Inclusion?

- Policies and practices that apply equally, regardless of political belief or association
- Respect employee beliefs while encouraging employees to respect the beliefs of others
- Empower employees to navigate difficult topics and differing viewpoints



Strategic Focus

- To avoid ideological conflict, focus on core principles:
 - No harassment, discrimination, retaliation
 - Condemn hate and violence
 - Focus on productive work environments and relationships
 - Support employees



Navigating Difficult Topics

- For strategic decisions and conversations:
 - Listen to understand, not to respond
 - Acknowledge differing opinions
 - Be respectful
 - Decide how to respond and make appropriate preparations
 - Test response with company values and positions
 - Avoid generalizations and labeling





Case Studies

Political Discussions @ Work

Jimmy, a 40-year-old supervisor, talks to his 65-year-old friend, fellow Democrat, and subordinate employee, Sheila, about the election during work and after-work hours via text messages. Jimmy tells Sheila that he thinks that Joe Biden was too old to run for President, makes related comments, and sends Sheila memes about Biden's age. About Kamala Harris, Jimmy says "I don't think she has what it takes to run this country, but I'll vote for her because I don't have any option." And "Won't it be weird to have a First Gentleman?"

Sheila does not respond to Jimmy's comments. However, Sheila remembers each comment vividly in 2027 when she is involuntarily separated from employment by Jimmy for poor work performance. They bother her even more when she learns from her former colleagues that Jimmy has hired a much younger male employee to fill her former role.

Sheila files a lawsuit alleging age and gender-based discrimination. As circumstantial evidence of Jimmy's alleged anti-female and age-based animus, Sheila references Jimmy's text messages and comments.

Political Discussions Online

Fatima, an Iraqi American and practicing Muslim, is an employee at a mid-sized company in Connecticut. She is known for her professionalism and dedication to her work. Recently, Fatima posted commentary on her personal LinkedIn profile about the ongoing Gaza-Israeli conflict.

Upon noticing the post, the company's management becomes concerned. They worry that Fatima's public expression on such a sensitive and politically-charged issue might attract unwanted attention or backlash, potentially affecting the company's reputation and client relationships. Management decides to request Fatima to remove her post, fearing that it could create a divisive atmosphere in the workplace and among clients.

Political Attire @ Work

A politically active, publicly traded company has made multiple statements in recent years related to its commitment to inclusion, equity and diversity, recent events, and its position on proposed legislation. Recently, a complaint was submitted by an employee who alleged that a colleague was wearing a red MAGA hat at the worksite and stating her support for Israel. A year earlier the company had provided its employees with hats featuring the Ukrainian flag.

Political Activity Outside of Work

Angela decides she wants to serve her community so she decides to run for a seat on the County Board of Directors. Before doing so she checks with her company and confirms that they don't have an issue with her running. The good news: She wins! The bad news: She's devoted to her role and spends more and more time on her work with the County. Her work with the Company is beginning to slip and she's making costly errors that she's never made before.

The Company looks into the issues and determines that Angela is spending much less time on her job than she used to (leading to the errors) because she is doing so much work for the County. The Company tells her that her role with the County is interfering with her job duties and gives Angela an ultimatum: the County or us. She refuses to step down from the County board and the Company terminates her. She brings a claim for political discrimination under California law (where she's located).

(Based on a real case!)



FAQS

Frequently Asked Questions

- Should we have a policy on politics in the workplace?
- What impact could the upcoming election have on how we approach these issues?
- Can we differentiate between “acceptable” political stances and “unacceptable” political stances in how we approach these issues?
- How can we prepare now for political speech issues that may come up in the future?

Proactive Strategies:
Politics in an Inclusive Workplace

**Policy
strategy**

**Equal
enforcement**

Game Plan

Sign Up for a Demo

Three ways to sign up for a demo:

1. Reply “Yes” to the on-screen poll
2. Visit our website: [Compliancehr.com](https://compliancehr.com)
3. Email our team at demo@compliancehr.com

Benefits of a custom demon:

- Discuss your organization’s requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies

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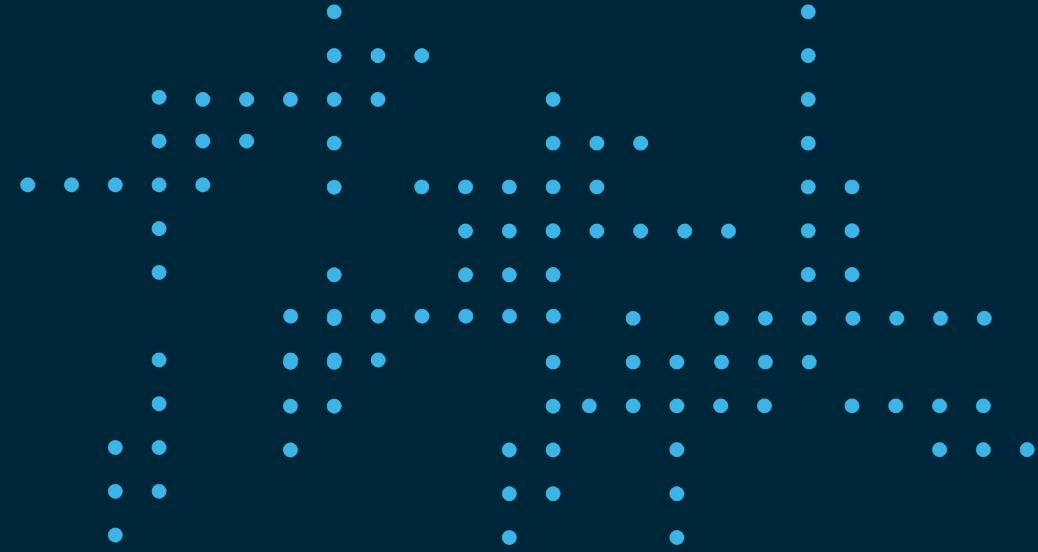
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Questions?

This information provided by Littler is not a substitute for experienced legal counsel and does not provide legal advice or attempt to address the numerous factual issues that inevitably arise in any employment-related dispute. Although this information attempts to cover some major recent developments, it is not all-inclusive, and the current status of any decision or principle of law should be verified by counsel.



Thank You



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