



Navigating Political Discussions in California Workplaces

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Seyfarth Shaw LLP

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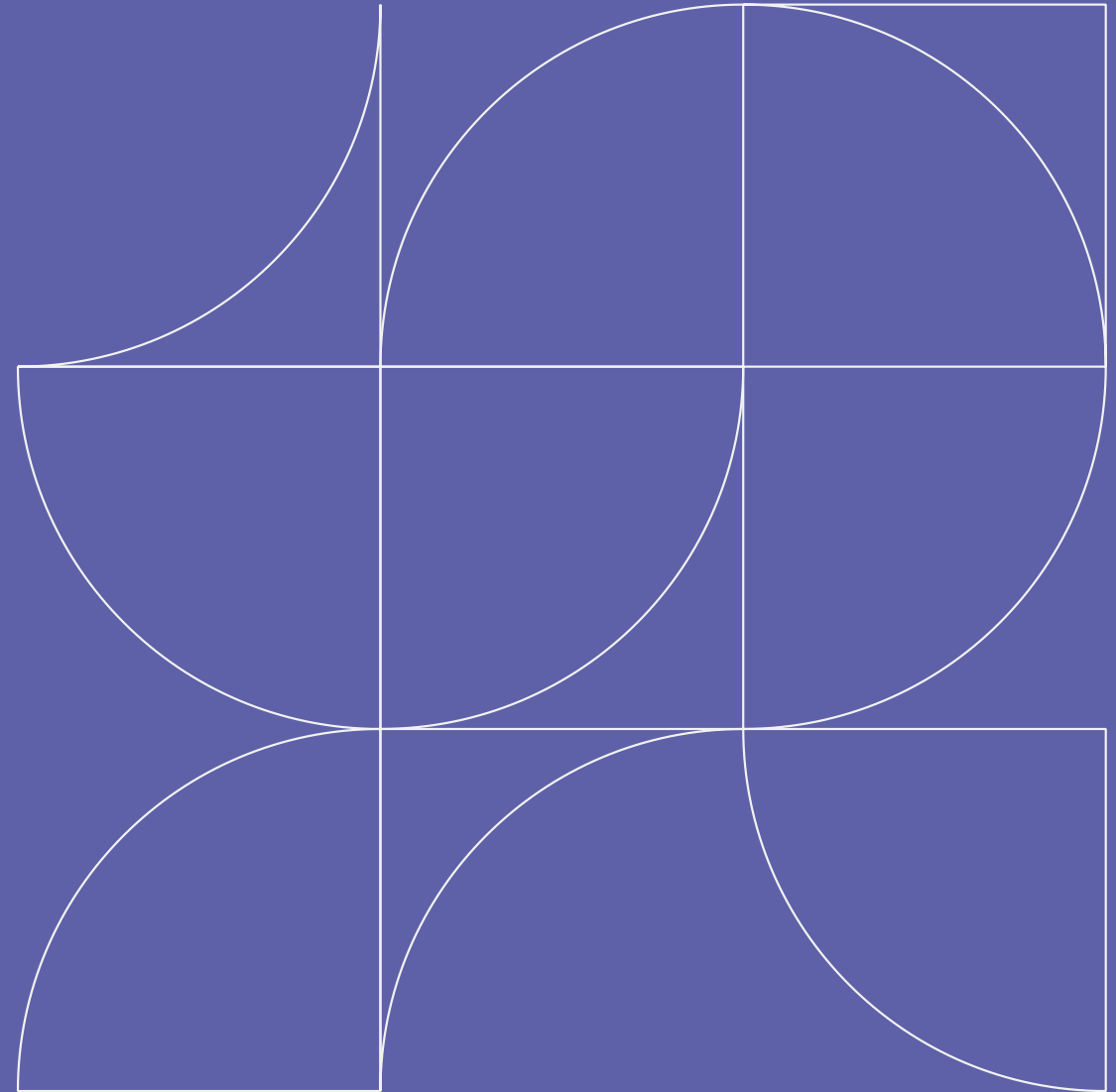
Agenda

01 State Law Considerations

02 FEHA/Title VII Considerations

03 Practical Approaches

State Law Considerations



Interfering With or Restricting Speech or Conduct in the Workplace Regarding Electoral Activities

- Over 40 states have laws to this effect.
- Generally, prevent employers from coercing or attempting to coerce employee's voting activity / political activity.
- Types of activities that may be covered:
 - influencing or seeking to influence:
 - joining a particular party.
 - voting for a particular candidate or on a particular issue.
 - requiring political contributions to particular party or candidate.
 - including political mottos or similar messages on pay envelopes.
- Specifics vary state by state.

The Lay of the Land In California

- Broadly worded provisions of the Labor Code forbid employers from discriminating against an employee or applicant for lawful off-premises conduct during nonworking hours.
 - **Labor Code § 96(k)** provides that: the Labor Commissioner can take assignment of claims for loss of wages as the result of demotion, suspension, or discharge from employment for **lawful conduct occurring during nonworking hours** away from the employer's premises.
 - **Labor Code § 98.6(a)** provides that: A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant **engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101)**...

The Lay of the Land In California

Labor Code § 1101 provides that:

No employer shall make, adopt, or enforce any rule, regulation, or policy:

(a) Forbidding or preventing employees from engaging or participating in politics or from becoming candidates for public office.

(b) Controlling or directing, or tending to control or direct, the political activities or affiliations of employees.

Labor Code § 1102 provides that:

No employer shall 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 or refrain from adopting or following any particular course or line of political action or political activity.

Off Duty Conduct In California

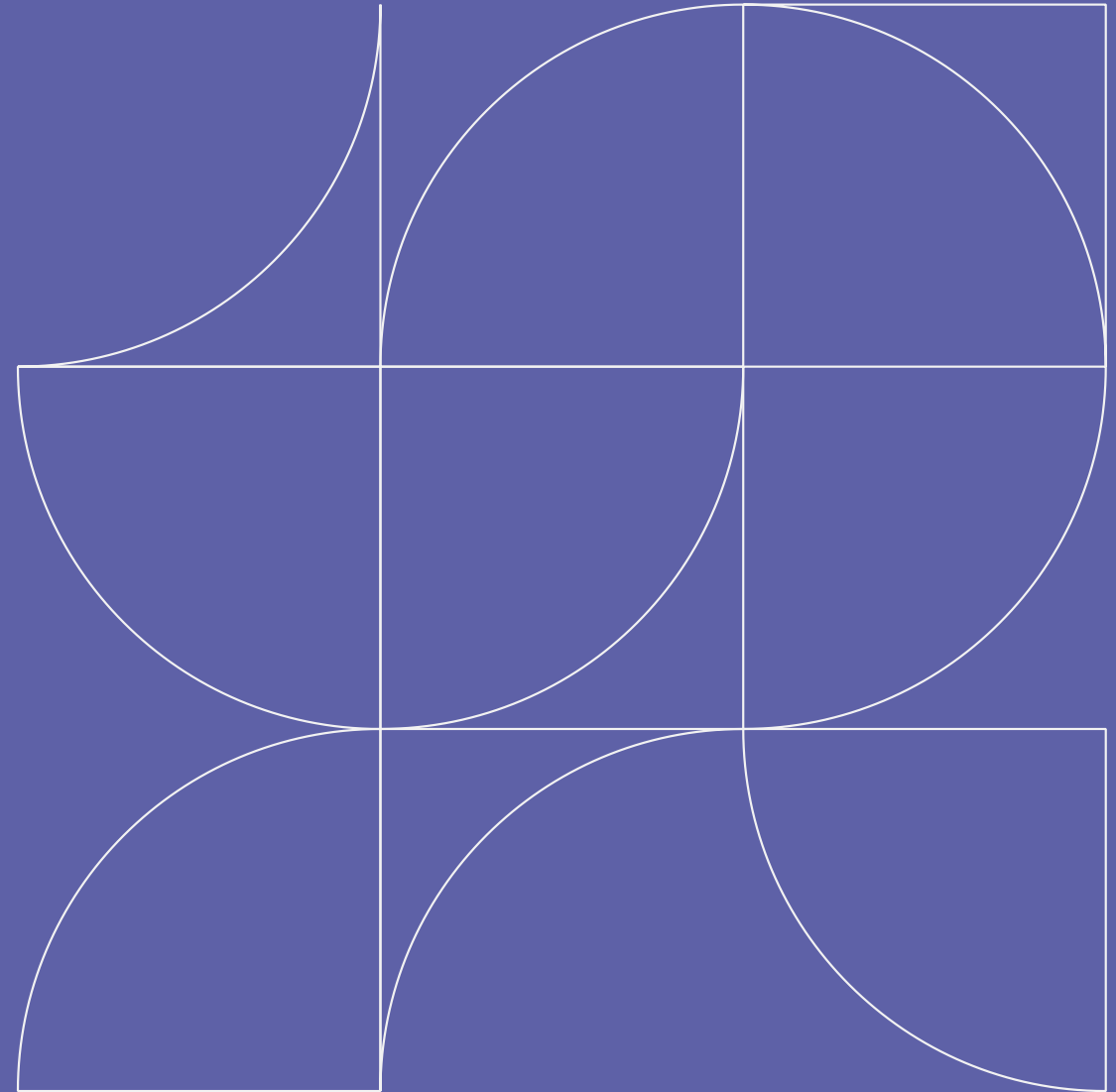
- California
 - Broad Ranging Protections for political activity and lawful off-duty conduct.
 - “Political Activity” defined very broadly.
 - Courts have found political activity to include:
 - advocating for gay rights;
 - publicly criticizing a public official;
 - wearing symbolic arm bands; and,
 - associating with others for the advancement of beliefs to be political activity.
 - “Lawful off-duty conduct” also broad (and vague).
 - Activity that is already an existing right under the state and federal constitutions, such as activity protected by privacy or free speech rights.

California Worker Freedom From Employer Intimidation Act

California Labor Code § 1137 (SB 399) prohibits employers from requiring employees to attend meetings that express the employer's opinions on **political matters** (e.g., elections, legislation, political parties, unionization) and employer's opinions on **religious matters**.

- **Voluntary Attendance.** Employers can still hold such meetings, but attendance must be voluntary.
- **No Retaliation.** Employers are prohibited from retaliating against employees who choose not to attend or participate.
- **Enforcement**
 - Employees may seek injunctive relief
 - Private right of action to recover damages
 - Civil penalties up to \$500 per affected employee
- *California Chamber of Commerce v Bonta*, 2025 WL 2779355 (E.D. Cal., Sep. 30, 2025) (enjoined SB 399 as a viewpoint and content-based regulation that cannot withstand strict scrutiny).

Title VII & FEHA Considerations



Does the Political Expression Impact the Workplace?

**Effect on
Coworkers**

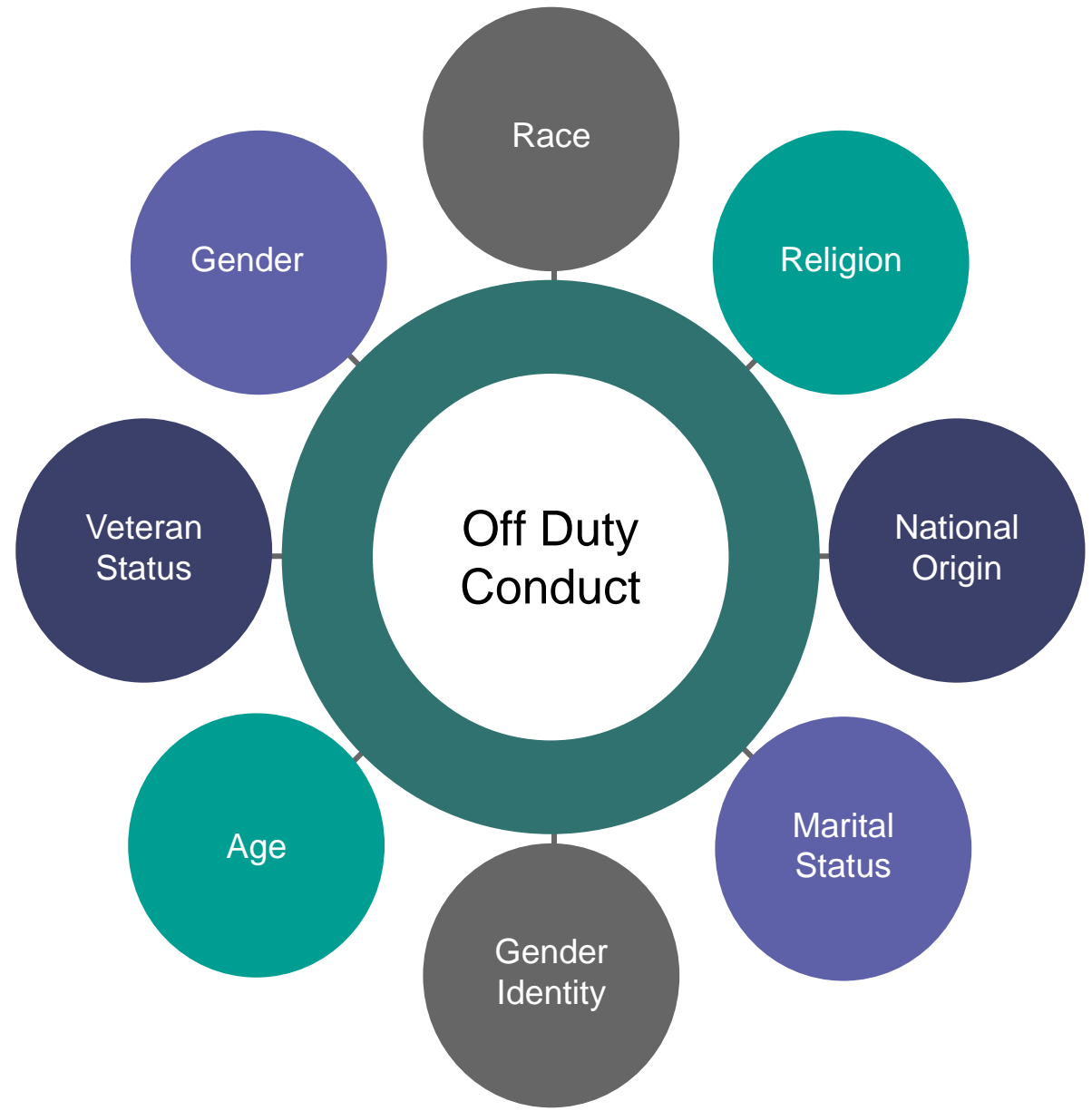
**Give Rise
to
Complaints**

**Effect on
Job Duties**

**Damage
Company
Reputation**

**Effect on
customers,
investors,
applicants**

Does the Political Expression Implicate a Protected Classification?



Does The Political Expression Violate a Company Policy?



- Anti-discrimination policy
- Anti-harassment policy
- Respect for others policy
- Diversity & inclusion policy
- Social Media policy

Practical Considerations

- What is our company culture?
- How much political expression can, or do we want to, police?
- How do we stay reasonably consistent?
- What boundaries can we enforce?

Duty to Investigate



- If Company is on notice of potential report of discrimination, harassment, or retaliation, a California employer must investigate and take prompt corrective action
- Gather relevant facts
- Don't make assumptions
- Get complainant's account
- Due process for accused
- Reasonably thorough
- Zero tolerance for retaliation

If Substantiated, And Employer Elects to Act on the Conduct, Determine the Appropriate Consequence



- Verbal warning
- Written warning
- Training or 1:1 coaching
- Last chance agreement
- Termination

Invest in Training

- Training allows employers to be proactive
- Educate in-house legal team on legal framework
- Educate HR team / People Operations on understanding legal boundaries, how policies apply, and actions to take if complaint is received

**Reach out if you
need help --
Counseling**



**thank
you**

For more information, please contact

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