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## Top 10 Tips for Addressing Social and Political Issues in the Workplace

Michigan Restaurant & Lodging Association

Member Webinar

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## **1. Develop Policy Framework**

- Prepare written policy that addresses communication about social and political issues
  - Scope of policy
    - Consider ability to discipline misconduct inside vs. outside the workplace
    - Consider whether conduct occurs during working time or not, even if in the workplace
  - Consider legal limitations
    - Lawful off duty conduct laws may restrict the reach of employers
    - Ensure policy is compliant with NLRA
- Review existing policies that dictate behavioral expectations and incorporate by reference
  - E.g., Code of Conduct, anti-discrimination/harassment
- Consider resources for employees to assist in compliance
  - Training for handling incidents involving colleagues/customers
  - EAP or other resources to provide support

## **2. Avoid Unlawfully Overbroad Language**

- Ensure that written policy does not contain unlawfully overbroad language
  - Explicitly restricting protected concerted activity (e.g., banning union activity)
  - Even if policy does not explicitly prohibit protected concerted activity, a rule might be unlawful if:
    - Employees would reasonably construe rule's language to prohibited protected concerted activity; or
    - Applying rule to restrict exercise of protected concerted activities
  - Rules frequently litigated include
    - Confidentiality
    - Professionalism
    - Trademark
    - Photography/recording
    - Media contacts
- Include exceptions for statutorily protected activities
- Consider how individuals will perceive policy if published or made an exhibit at a hearing or trial

### **3. Train and Provide Reminders Regularly**

- Train employees so they have a clear understanding of policies and expectations for conduct
- Periodically remind employees about policy so topics remain top of mind
- Provide practical guidance to help employees understand policies in application
- Ensure consistent message around the importance of topics, from senior management down

### **4. Reserve Right to Monitor**

- Reserve right to monitor workplace and online activities for policy violations
- Expressly disclaim any expectation of privacy in the workplace or company-provided electronic communications equipment
- Be aware of laws prohibiting or limiting surveillance
  - National Labor Relations Act
  - State laws
  - Common law expectation of privacy
- Provide notice of monitoring
  - Providing notice helps eliminate any expectation of privacy
  - Some state laws, such as in New York, require employers to notify employees when monitoring electronic communications
- Consider monitoring only upon notice of policy violations

### **5. Evaluate Various Sources of Scrutiny and Pressure**

- Legal risk
  - Individual claims, e.g., unlawful discrimination, retaliation, or discharge
  - Class claims, e.g., national origin discrimination
  - Regulatory scrutiny, e.g., National Labor Relations Board
- Reputational risk
  - Topics lend themselves to increased possibility of employees/customers publicly airing grievances
  - Customers are increasingly using buying power as leverage with respect to social and political issues
- Competitive risk
  - Employers may feel pressured, by employees, customers, or other stakeholders, to take a position alongside their peer organizations
  - In competitive market for talent, employers' response to social issues has potential to attract/deter candidates

## **6. Consider Employee Morale**

- Advise employees that others may focus on impact, not intent, of their communications
- When in doubt, follow the “golden rule”
- Identify resources, such as leadership or EAP, for support

## **7. Provide Outlet for Expression**

- Create forum or space for facilitated dialogue on challenging topics:
  - Intranet
  - Company blog
  - Voluntary “town halls”
  - Small group meetings
- Consider compromise (e.g., t-shirt v. small bracelet)

## **8. Limit Liability**

- Consistently apply policy, investigate alleged violations, and reprimands
  - Careful not to pick “winners” and “losers” amongst competing issues
- When responding, consider whether subject of employee’s advocacy has a direct nexus to terms and conditions of employment

## **9. Identify Corporate Priorities**

- Consider impact of policy on company culture
- Consider impact of policy on recruitment and retention
- Be aware of allegations of “performative allyship” and “corporate hypocrisy”

## **10. It’s Your Company**

- At the end of the day, it is your company, so it is your choice
- Consider all factors above
- Make sure to think about all stakeholders, including employees, officers, shareholders, and the community
- Be consistent