

**BAKER DONELSON**  
BEARMAN, CALDWELL & BERKOWITZ, PC

# **Election Season is Here: Politics and Religion in the Workplace**

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**EXPAND YOUR EXPECTATIONS<sup>SM</sup>**

# Roadmap

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- Religion in the Workplace
  - Overview of Religious Discrimination and Harassment
  - Employer Best Practices
- Politics in the Workplace
  - Overview of Applicable Law
  - Employer Best Practices
- When Religion and Politics Collide



# Religion in the Workplace

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# The Law

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- Title VII:
  - Prohibits employers from discriminating on the basis of religion.
- EEOC Guidelines:
  - Provides guidance on the implementation of Title VII.
- Tennessee Human Rights Act:
  - State law that prohibits employers from discriminating on the basis of religion.

# Religion

- **Title VII:**
  - Includes all aspects of religious observance and practice, as well as beliefs...
- **EEOC:**
  - Expanded interpretation of Title VII's definition.



# Religious Discrimination

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- Treating an applicant or employee unfavorably, because of his/her religious beliefs.
- Must reasonably accommodate unless “undue hardship.”



# Religious Accommodation

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- Employer required to accommodate “sincerely held” religious beliefs.
- Very few cases have rejected claims of religious based practices.



# Religious Accommodation

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- Responsibilities of Employee:
  - Notify employer about his/her need for religious accommodation.
  - Request must be clear.
- Responsibilities of Employer:
  - Good faith attempt to resolve conflict.
  - If unable to resolve conflict, identify why.



# Religious Accommodation

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- Employer may avoid requirement of accommodating, if:
  - Employer offered reasonable accommodation, refused by employee; or
  - All accommodations would cause undue hardship.

# Undue Hardship

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- Causes more than a minimal burden on the operations of the employer's business.
  - Greater than ordinary administrative cost;
  - Compromises workplace safety;
  - Decreases workplace efficiency;
  - Infringes on other employees' rights;
  - Requires other employees to perform hazardous or burdensome work.
- Cannot be "too speculative."



# Common Religious Accommodations

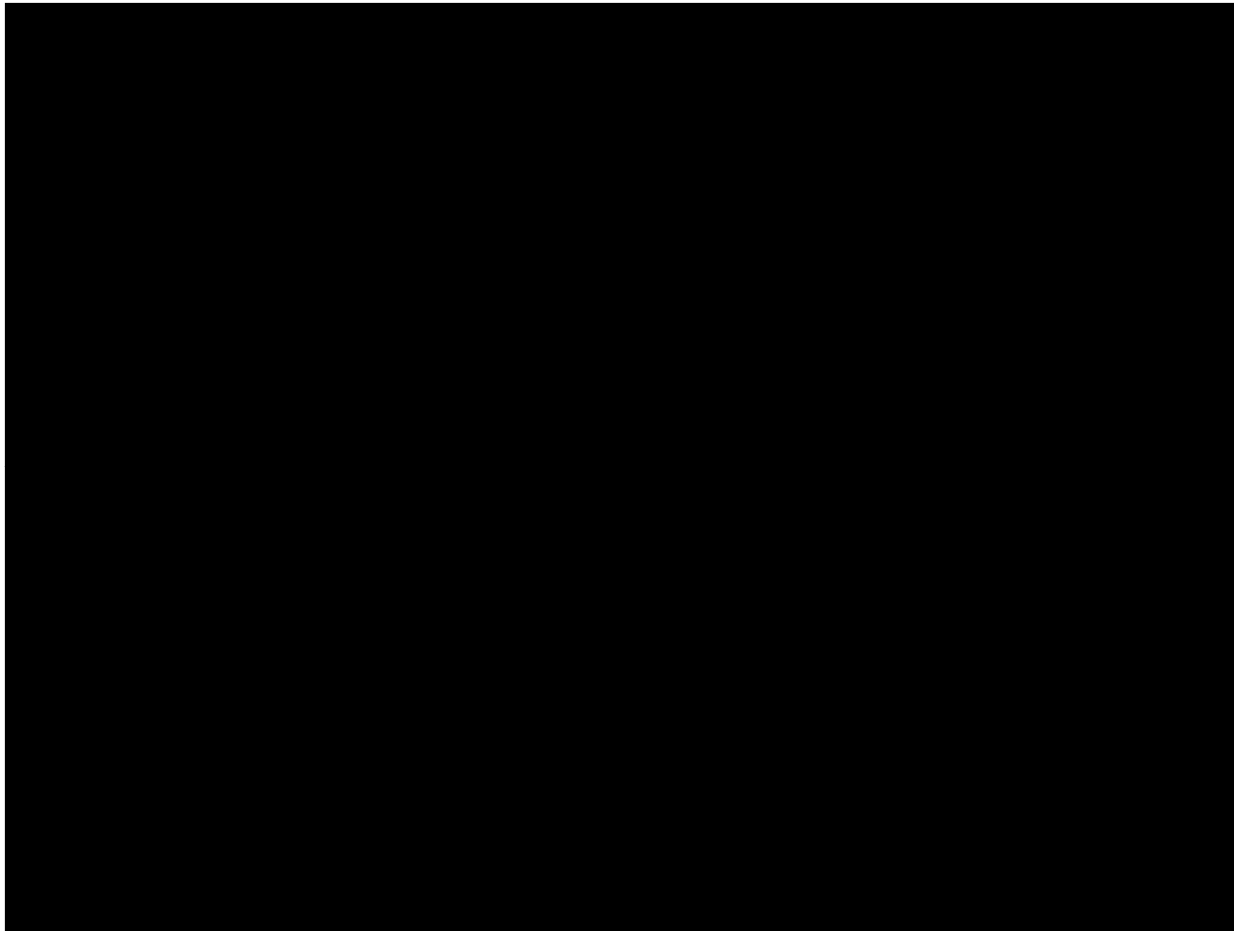
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- Leave without pay for religious observances;
- Temporary scheduling changes/shift swaps;
- Relaxation of clothing or personal grooming codes;
- Job reassignment;
- Employee speech/proselytizing.



# Religion in the Workplace

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# Employee Speech/Proselytizing

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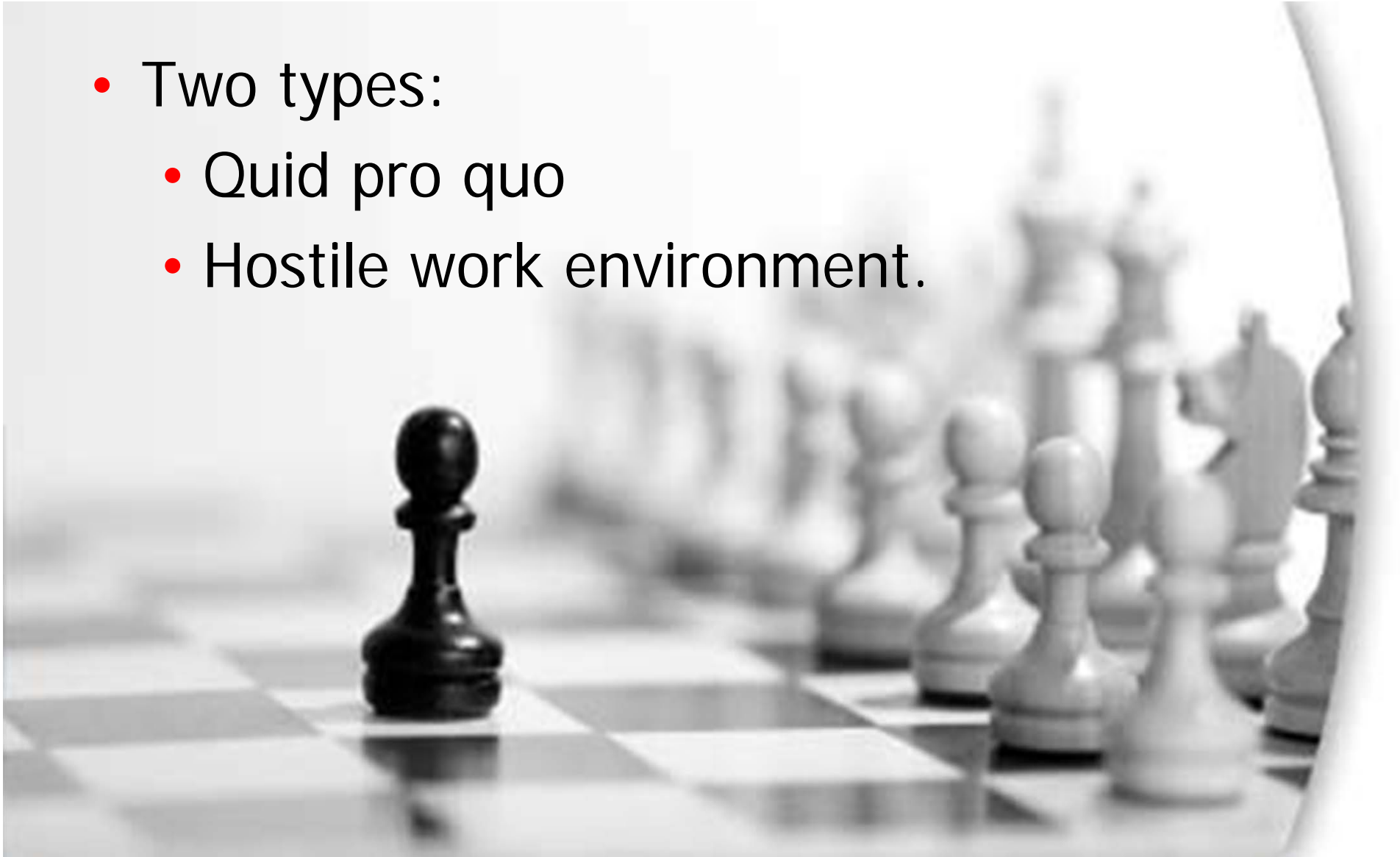
- Permitted as long as:
  - Does not interfere with operations;
  - Does not impair customer relations;
  - Does not create harassing or hostile work environment.



# Religious Harassment

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- Two types:
  - Quid pro quo
  - Hostile work environment.

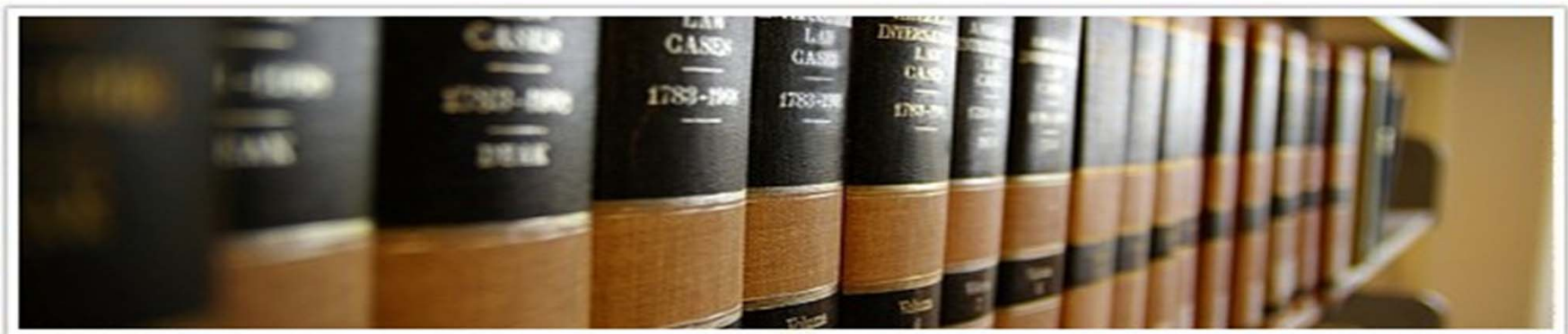




# Quid Pro Quo

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- Rare
- Proof required:
  - Employee was required to submit to a religious demand/requirement; and
  - Employee response to demand requirements was used as basis for the decision.



# Hostile Work Environment

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- More common!
- Proof required:
  - Employee is a member of protected religious group;
  - Employee subjected to unwelcome harassment;
  - Harassment was based on religion; and
  - Harassment affected term, condition, or privilege of employment.

# Hostile Work Environment

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- Generally, more than random or isolated comments or conduct.
- Repetitive and/or pervasive.
- But, extremely serious isolated incident may give rise to a claim.



# Best Practices

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- Establish a policy for religious accommodation;
- Set guidelines for acceptable work space décor;
- Establish boundaries for employees by indicating which tools are for business use only;
- Well-publicized and consistently applied discrimination and anti-harassment policy;
- Establish complaint procedure;
- Train supervisors and managers.



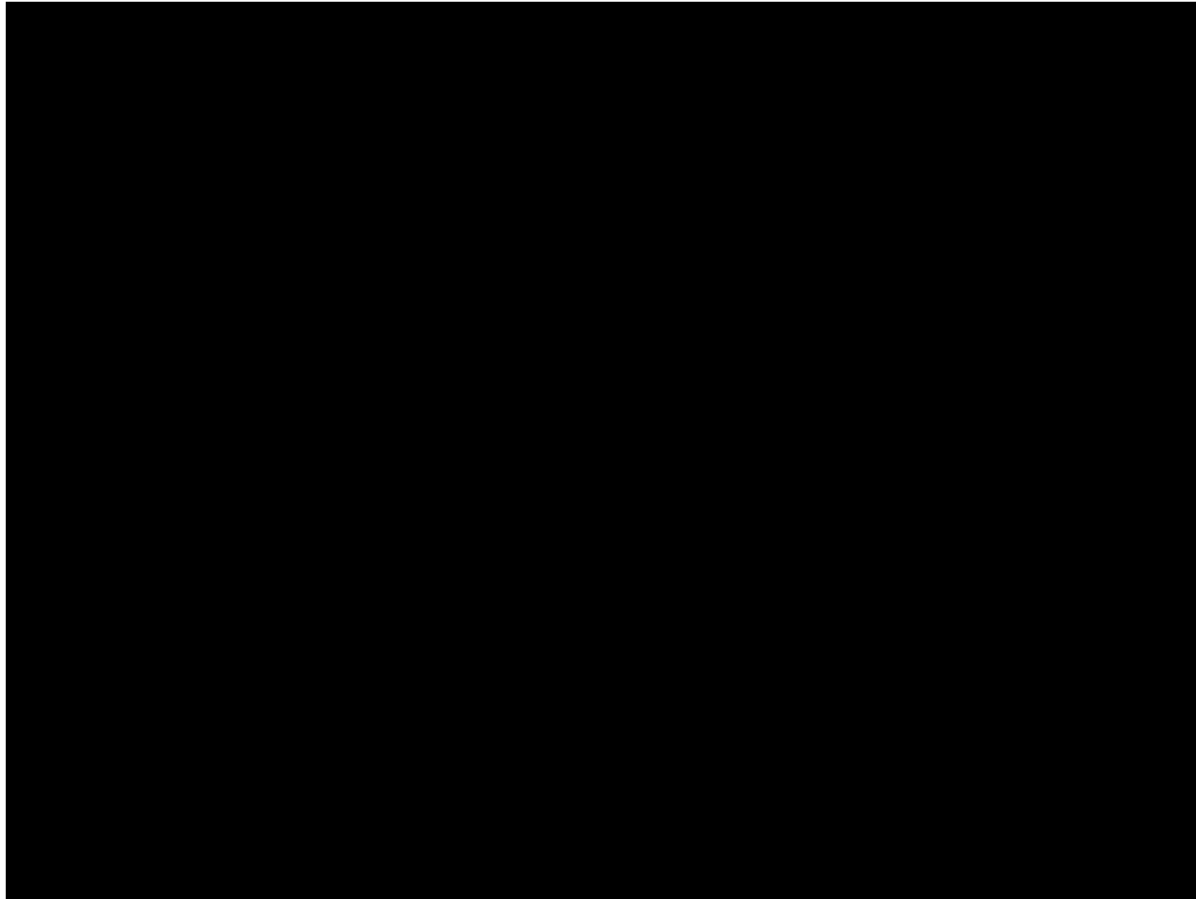
# Politics in the Workplace

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# Politics in the Workplace

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# The Law

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- First Amendment
- Federal:
  - Voting rights laws.
  - NLRA section 7.
- State:
  - Laws protecting political activities.
  - Election leave laws.



# Federal Law

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- Federal Voting Rights Laws:
  - Prohibits anyone from seeking to intimidate, coerce, or interfere with any person's right to freely vote as he/she chooses candidates for federal office.
- NLRA Section 7
  - Political issues are often union issues.
  - When political speech bears some relationship to the workplace, restrictions may conflict with rights under the NLRA.

# State Laws

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- Federal law only protects employee's political activities in context of voting.
- States can enact statutes protecting employees from adverse job actions based on the employees' political affiliation or activity.



# State Laws: Political Activities

- Example:
  - California Labor Code Section 1101 forbids employers from preventing employees from engaging in political activities.
- Illustrative Case:
  - *Smedley v. Capps, Staples, Ward, Hastings and Dodson*

CALIFORNIA REPUBLIC

# State Laws: Tennessee

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- Unlawful to coerce employees to vote for any candidate or to discharge employees for their failure to vote as the employer wishes.
- Unlawful for employers to circulate any statement or report calculated to intimidate or coerce employees to vote or not vote for any candidate or measure.

# State Laws: Election Leave

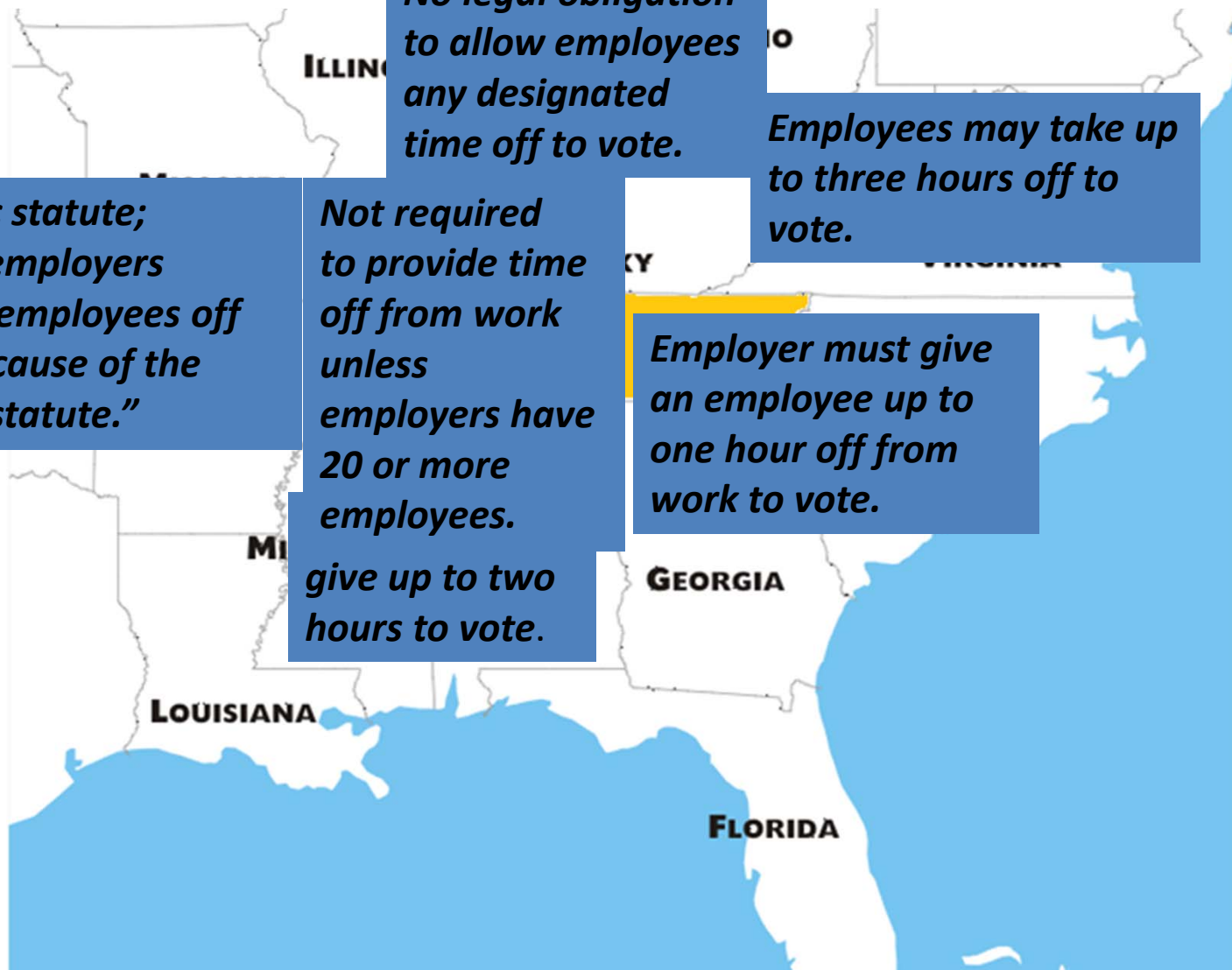
*No legal obligation to allow employees any designated time off to vote.*

*Employees may take up to three hours off to vote.*

*No specific statute; however, employers should let employees off to vote because of the "coercion statute."*

*Not required to provide time off from work unless employers have 20 or more employees. give up to two hours to vote.*

*Employer must give an employee up to one hour off from work to vote.*





# Political Dialogue:

## Potential Employer Liability

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- Some types of political dialogue may give rise to discrimination or harassment claims.
- Conversations about politics can often morph into discussions about protected characteristics:
  - McCain = Age
  - Obama = Race
  - Clinton = Sex
  - Romney = Religion

# Best Practices

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- Anti-harassment policy addressing legal ramifications of political discussions in the workplace;
- Develop a complaint procedure encouraging employees to address offensive political speech;
- Train managers and supervisors to avoid political discussions with subordinates;
- Institute internet and email policy.



# When Politics and Religion Collide

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- EEOC Charge alleging discrimination, retaliation, and hostile work environment based on race, national origin, and religion.
- EEOC does onsite investigation based on string of political emails.
- These emails include...



# Email 1: Why did the chicken cross the road?

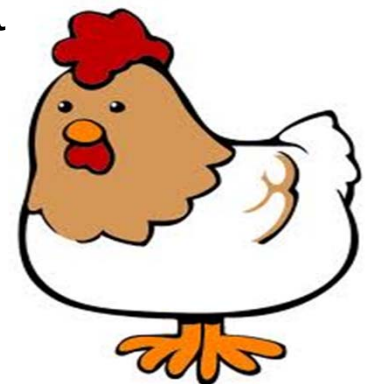
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BARACK OBAMA: The chicken crossed the road because it was time for a change!

GEORGE W. BUSH: We don't really care why the chicken crossed the road. We just want to know if the chicken is on our side of the road, or not. The chicken is either against us, or for us.

BILL CLINTON: I did not cross the road with that chicken.

AL GORE: I invented the chicken.



## Email 2: “Bush prepares for the Obama Inauguration.”

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# Email 3: Message from the Taliban

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## ***WARNING FROM THE MIDDLE EAST:***

*This morning, from a cave somewhere in Pakistan, Taliban Minister of Migration, Mohammed Omar, warned the United States that if military action against Iraq continues, Taliban authorities will cut off America's supply of convenience store managers, and possible candidates for President of the United States.*

*And if this action does not yield sufficient results, cab drivers will be next, followed by Dell and AOL customer service reps, and then Motel 6 managers.*



# Email 4: "Plot to Kidnap Obama Uncovered."

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# When Politics and Religion Collide

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- Outcome of EEOC Investigation...



# Questions?

