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# Employer Insights

A Moreton & Company Human Resource and Employee Benefits Compliance Newsletter.

## Political Discussions in the Workplace

Expressing oneself is a fundamental right for every American, but the extent of this right in the workplace can vary. Employers aim to foster inclusivity and mutual respect among employees, yet political expression can have the opposite effect.

### Politics' Polarizing Effects

It doesn't take much for a political conversation to turn nasty—watch any political debate to see this concept in action. Allowing such discourse without regulation can quickly lead to workplace distractions or disruptions.

To complicate matters, political conversations often intersect with other sensitive areas such as gender and reproductive rights. Conversations that wade too far into certain topics can lead to claims of discrimination or harassment. Beyond interpersonal and legal ramifications, overt political expressions by customer-facing employees can influence public perception of a company's products or services.

### Legal Considerations

In addressing employee expression, several factors should be considered:

- **Type of Employer (Private or Public):**  
Public and private employers are governed by different rules.
- **Applicable Laws:**  
Federal, state, and local laws influence the extent of permissible employee expression.
- **Company Policy:**  
Internal company policies play a significant role in regulating employee behavior.

Public employers are subject to state and federal constitutional provisions, including the First Amendment, which protects political speech. However, this protection is not absolute. Speech that interferes with workplace duties or causes conflicts is not protected.

Private employers have more flexibility in setting workplace behavior standards. As long as these restrictions comply with the law, private employers can define acceptable behavior.

Certain laws protect specific types of speech, such as discussions about unionization, complicating efforts to ban political dialogue entirely. Additionally, state and local laws can vary significantly. Employers must understand that legal protections for political expression differ by location and should seek advice from local legal counsel before implementing or changing workplace policies.

## Tips for Employers

Employers can consider proactive and thoughtful steps to address expectations, encourage respect, and create an environment that remains civil. These considerations include:

- **Clarifying Expectations:**  
Clearly outline what is expected regarding political discussions and behaviors. Define what constitutes acceptable and unacceptable behavior.
- **Focusing on Behaviors, Not Beliefs:**  
Emphasize appropriate behaviors without dictating what employees should believe. Clearly state unacceptable behaviors without influencing personal beliefs.
- **Encouraging Respect:**  
Promote mutual respect among employees, recognizing that disagreements are natural. Encourage a culture of respect for diverse opinions.
- **Leading by Example:**  
Leaders should avoid endorsing specific political parties or candidates to prevent creating a partisan environment. Demonstrating desired behaviors sets the tone for workplace culture.
- **Providing Resource:**  
Offer resources such as Employee Assistance Programs (EAPs), flexible work options, and wellness programs to support employees dealing with political stress.
- **Ensuring Consistency:**  
Apply standards uniformly to avoid claims of discrimination or harassment. Consistent enforcement of policies is crucial.

## Conclusion

Political discussion in the workplace is a complex issue that requires careful management. While private employers generally have authority over workplace conduct, including political speech, employees should be regularly reminded of company policies and the importance of treating colleagues with respect and civility. Consistent enforcement of these policies helps maintain a harmonious and productive work environment.



# IRS Issues FAQs and Sample Document for Educational Assistance Programs

The IRS has issued [FAQs](#) addressing educational assistance programs and has provided a sample document that employers can use as a template for designing their own programs. Taxpayers may exclude up to \$5,250 from their gross income per calendar year of certain employer-provided educational assistance benefits. These include payments for tuition, fees, and similar expenses, if they are provided under a qualified educational assistance program. Employers are not required to report these benefits on Form W-2, and amounts paid under these programs generally are deductible by the employer as business expenses. Key points in the FAQs include:

- **Separate Written Plan:**  
To be qualified under Code §127, an educational assistance program must be formalized in a separate written plan document. The FAQs include a link to Publication 5993, a sample educational assistance plan that employers may use to establish their own program. Employers can modify the sample plan and include additional provisions, so long as applicable requirements under the Code and underlying regulations are met.
- **Benefits:**  
Examples of tax-free educational assistance benefits include payments for tuition, fees, books, supplies, and equipment for both undergraduate and graduate courses. Payments need not be work-related. Educational assistance benefits do not include: payments for meals, lodging, or transportation; tools or supplies that students can keep after course completion (other than textbooks); and courses involving sports, games, or hobbies, unless there is a reasonable relationship to the employer's business, or they are required as part of a degree program.
- **Qualified Educational Loans:**  
Educational assistance benefits also include principal or interest payments by employers after March 27, 2020, and before January 1, 2026, on qualified educational loans incurred by employees for their own education. These loan payments can be made directly to a third party (e.g., an educational provider or loan servicer) or to the employee. An existing plan may need to be amended to include this benefit.
- **Annual Limit:**  
The annual limit for expenses paid and incurred during a calendar year is \$5,250. Except for qualified education loans, expenses must be incurred and reimbursed within the same year that they are paid.
- **Exclusive Benefit:**  
Educational assistance programs must exclusively benefit employees. Benefits for an employee's spouse or dependents generally do not qualify.
- **Reimbursements:**  
In the case of educational assistance benefits that are reimbursements, employees must provide substantiation.
- **Nondiscrimination:**  
While there are no specific income limits for receiving educational assistance benefits, an educational assistance program must not discriminate in favor of employees who are highly compensated. A maximum of 5% of the amounts paid or incurred by the employer for educational assistance during any calendar year may be provided for the class of individuals who are more-than-5% shareholders or owners (or their spouses or dependents).
- **Working Condition Fringe Benefit:**  
Benefits that qualify as a working condition fringe benefit can be excluded from the employee's gross income and need not be included in wages, regardless of amount. A working condition fringe benefit is a type of benefit provided by an employer that, if paid by the employee, would qualify as a deductible business expense.

These FAQs are not published in the Internal Revenue Bulletin and are not binding on the IRS for case resolution. However, no underpayment penalty will apply to taxpayers relying upon them in good faith.

The FAQs provide a helpful summary of the Code's rules for educational assistance programs. However, employers should keep in mind that they have flexibility in designing their programs. For example, employers need not offer reimbursements for all expenses that can be reimbursed tax-free under the rules. An employer's program could limit the courses that are eligible (e.g., to courses at a fully accredited two-year or four-year college) or the expenses that can be reimbursed (e.g., only tuition). Reimbursement could also be conditioned on attaining a specified minimum grade or remaining employed with an employer for a certain amount of time after completing the education. A program could also include per-employee or aggregate reimbursement limits (or both). Some, but not all, of these options are reflected in the [IRS's sample plan](#).

# Court Allows Class Action Challenging Wellness Program Incentives to Continue

An employer-sponsored wellness program allowed participants in the employer's medical plan to receive a premium discount for completing a biometric screening and meeting certain standards for criteria such as blood sugar, blood pressure, and cholesterol. Upon enrolling in the medical plan, employees were given a grace period in which to decide whether to participate in the wellness program. The employees automatically received the premium discount, but if they did not elect to participate in the biometric screening, the premium increased by approximately \$34 per week when the grace period ended.

Two employees affected by such an increase sued the employer on behalf of themselves and others, alleging that the wellness program violated the Americans with Disabilities Act (ADA) because participation involved a medical examination that was not "voluntary" as required by that law (See *Diment v. Quad/Graphics, Inc.*, 2024 WL 2939049 (N.D. Ill. 2024)).

The employees argued that the increased premium was a significant penalty that coerced employees into participating in the screening, rendering the program involuntary. The employer argued that the increase represented the original costs of the premium and that employees choosing to undergo the screening merely received a discount. The court explained that the ADA does not include a definition of the term "voluntary" and that whether a program is voluntary is a question of fact rather than law. Concluding that the employees had sufficiently alleged that the program was involuntary, the court rejected the employer's request to dismiss the case, allowing the potential class action to continue.

The Equal Employment Opportunity Commission's (EEOC) rules governing wellness program incentives have remained in flux since the EEOC withdrew proposed regulations that were announced in 2021 but never published in the Federal Register. The timing and extent of further regulation is unclear, but guidance on the legal parameters of incentives would be welcome. In the meantime, employers sponsoring wellness programs should ensure compliance with existing rules under the ADA, GINA, and HIPAA.



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