

Campaigning During COVID-19: Things to Think About During the Final Election Push

September 2020

As Election Day 2020 draws closer, candidates and political organizations nationwide must address COVID-19 as both a public talking point and an internal logistical concern. A complex and often difficult to reconcile web of state and local restrictions on public gatherings and stay-at-home orders has created hurdles for candidates, political action committees (PACs), and other political advocacy organizations across the country. These measures have sharply curtailed election-year activities, including the signature-gathering campaigns, canvassing, rallies, and long days at the office that typically mark the hectic campaign season. Fortunately, for candidates and political organizations, proper planning can bolster efforts to “reopen” the more traditional campaign season. Here are a few tips from the Wiley Employment & Labor Practice that we’ve used to help our clients do just that:

- Create a legal “advance team” with designated contacts who can efficiently communicate with organizational leadership to address things like restrictions on in-office work and structuring rallies and public gatherings to be compliant with state or local requirements and day-to-day employee issues related to COVID-19.
- Don’t be afraid to seek the help of experts. Responses to COVID-19 are ongoing, and restrictions can vary from week to week and within the same state or county. Many COVID-19 orders refer to or adopt language from earlier orders and federal agency guidance, making it challenging to put all those pieces together and get a complete understanding of active requirements. Seek out legal experts who have relevant experience interpreting statutes and orders and tracking

Authors

Christine E. Connelly
General Counsel
202.719.7372
cconnelly@wiley.law

Olaoluwaposi O. Oshinowo
Of Counsel
202.719.4275
ooshinowo@wiley.law

Practice Areas

Election Law & Government Ethics
Employment & Labor

nationwide COVID-19 developments so they can quickly update you on the limitations that apply to you in a given jurisdiction or circumstance. Rely on them. Having your legal advance team contact serve as a designated intermediary between organizational leadership or staff and outside legal counsel is a smart and efficient way to integrate such expertise.

- Think carefully about how you frame your activities. For example, the District of Columbia's Phase II COVID-19 order "encourages" employers to continue remote work to the greatest extent possible rather than having employees work at a physical office. We have seen some campaigns and political organizations headquartered in DC read that directive as prohibiting in-office work, but that does not have to be the case. A careful review of the activities to be completed by in-office staff can allow campaigns and political organizations to create a defensible business case for in-office work or other activities.
- Be transparent and clear in communications with staff. Campaigns and political organizations should be communicating to staff why certain activities are consistent with campaign or organizational necessities and how you incorporated health and welfare concerns in the decision-making process. Clear communication to employees or volunteers is a significant risk management step because individuals who interact with the campaign or organization daily are also the most likely source of complaints to state or local authorities about alleged failures to adhere to COVID-19 mandates.
- Develop written plans and guidance. No one can predict every eventuality; however, every campaign or political organization should have written guidelines for maintaining a safe workplace. These plans should include social distancing measures that are consistent with state and CDC guidelines and action plans to contain the disease.
- Understand that there is no one-size-fits-all plan for reopening the economy or your campaign activities. How and when your campaign or organization will reintegrate normal activities such as in-office work and political rallies will depend on location, size and nature of operations, risk tolerance, and the spread of COVID-19.

Like the broader mission to reopen the American economy, reopening for the election season involves many complex and heavily scrutinized decisions. Still, a thoughtful and measured approach can mitigate risk, ensure good-faith compliance with state and local orders, and assure maximum engagement during the final push to Election Day.

The COVID-19 pandemic continues to be disruptive to the workplace, and employers continue to need reliable advice to navigate a wide range of diverse new issues. Wiley's Employment & Labor Practice has a solution that provides the benefit of partnering with an experienced team of attorneys for pandemic-related employment advice at a fixed fee that allows for a controlled legal spend during these seemingly out-of-control times. Employers who take advantage of this plan have access to comprehensive COVID-19-related counseling, including, but not limited to: general workforce management; handling workplace exposures; drafting or revising COVID-19 policies; reopening and compliance with local, state, and federal law; and 24/7

access to help guide best practices.

In challenging times like these, the best teams have a versatile set of tools to work with and thrive. Contact us if you would like to discuss how adding Wiley's Employment & Labor Practice to your toolkit can benefit your organization.