An employee of a government contractor gave the finger to President Trump's motorcade. She was fired. A Google engineer wrote in an internal memo that women are less suited than men to be engineers. He was dismissed. A museum curator said it would be reverse discrimination if the museum stopped collecting works by white men. He was forced to resign.

Those cases arose in the U.S. In Britain, the birthplace of our common law and home to the mother of all parliaments, a woman wrote from home on her private Facebook account that Prince George is rich, advantaged and would never know hardship. She was sacked for gross misconduct. A British author tweeted support for J.K. Rowling's opinions on biological sex, regarded by many as trans-phobic. She was dropped from her publisher's children's franchise. A think-tank researcher tweeted that "male people are not women," *i.e.*, people can change their gender; not their sex. Her employment contract was not renewed.

All, or nearly all the dismissals – at least four of the five – were litigated or arbitrated (the sixth case was a resignation); the employees reportedly[1] lost every case.

So, may an employee be discharged for expressing an opinion off hours, outside the workplace? The federal civil rights statutes and New York State and City human rights laws, which ban discrimination based mainly on a status or condition (*e.g.*, race or pregnancy), do not appear to apply, except perhaps in certain cases of discrimination against a religion or creed. New York State's Labor Law makes it unlawful for any employer to discriminate against an individual because of his or her political or recreational activities that are legal, outside of working hours, off of the employer's premises and without use of the employer's equipment or other property. [2] This is protective of employees. However, in language shielding employers, the statute also provides that an employee's political or recreational activity is not protected if it "creates a material conflict of interest related to [among other things] the employer's … business interest"[3] This exception is quite broad.

What is an employer to do in this age of intolerance (on both the right and the left)? The statute's protections are uncertain. The conventional advice is to review company policies, update the manuals and communicate clearly to employees what is expected. Certainly, that can enhance an employer's chances in litigation. But more can be done: treat your employees with understanding and respect – as you would have them do unto you – and you may even avoid litigation that some would do unto you.

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Additional notes and articles on crisis management, corporate governance and other subjects may be found at [*https://www.mpzlaw.com/publications.html*](https://www.mpzlaw.com/publications.html).

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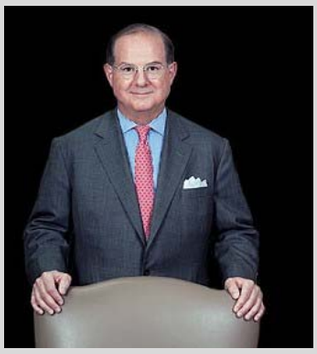

[1] Henry Mance, "The New Office Politics," *FT Weekend* (July 25/26, 2020), https://www.ft.com/content/c96647db-65e9-457c-9940-1975ea61979c.
[2] N. Y. Labor Law § 201-d (2) (a) and (c).
[3] N. Y. Labor Law § 201-d (3) (a).