

PARTICIPATOR

August 2016

HAVE YOU REGISTERED FOR THE NDIRF MEMBER TRAINING CENTER?

The NDIRF has partnered with LocalGovU to provide a catalogue of loss control videos, **free of charge** to all NDIRF members. Training topics include human resources, management, productivity, road and highway safety, safety and environment, and many other topics specific to local government. LocalGovU also features an extensive catalogue of law enforcement courses approved for continuing education credit by the North Dakota POST Board. The LocalGovU law enforcement catalogue is available for purchase at a deeply discounted rate for all NDIRF members.

Please see page 3 for registration instructions. Please contact NDIRF's Risk Services Manager, Brennan Quintus, at 1-800-421-1988 or Brennan.Quintus@NDIRF.com with any questions you may have regarding the NDIRF Member Training Center. ■

EMPLOYEE'S POLITICAL FREE SPEECH IS PROTECTED, EVEN IF HE DIDN'T SAY ANYTHING

Is an employee protected by his constitutional right to free speech even if he didn't actually engage in any protected speech or activity? Yes, says a recent decision by the U.S. Supreme Court.

According to the Court, when a public employer demotes an employee out of a desire to prevent him from engaging in protected political activity, the employee is entitled to challenge the demotion under the First Amendment to the U.S. Constitution – even if the employer's actions are based on a mistaken belief about his behavior.

When a (yard) sign isn't a sign

Jeffrey Heffernan, a detective working for the chief of police in Paterson, New Jersey, had agreed to pick up and deliver a campaign yard sign for his mother. The yard sign promoted the candidate running against the current mayor. Unfortunately for Heffernan, the current mayor had appointed both the chief of police and Heffernan's supervisor. Heffernan picked up the yard sign as a favor to his bedridden mother and wasn't involved in the campaign in any way.

Police officers observed Heffernan holding the yard sign and speaking to campaign staff at the sign distribution point. Word got back to the police chief, and Heffernan was demoted from detective to patrol officer as punishment for "overt involvement" in the campaign for the current mayor's rival. Heffernan sued, claiming that he had been demoted based on the mistaken belief that he had engaged in conduct that constituted protected speech and that he had been deprived of his constitutional right.

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**Financial Insight
From the CEO
Training Center Info**

NDIRF

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The district court and the 3rd Circuit ruled for the employer, holding that Heffernan hadn't been deprived of any constitutionally protected right because he hadn't engaged in any First Amendment conduct. According to the 3rd Circuit, Heffernan's claim would be actionable only if his demotion was caused by his actual – rather than perceived – exercise of his free-speech rights.

Supreme Court says....

In a 6-2 decision reversing the lower courts' decisions, the U.S. Supreme Court held that when an employer demotes an employee out of a desire to prevent him from engaging in protected political activity, the employee is entitled to challenge that unlawful action under the First Amendment – even if the employer's actions are based on a mistaken belief about his behavior.

The Court focused on the employer's motive and the facts as the employer reasonably understood them in determining whether it had violated Heffernan's First Amendment rights. The Court noted that the police department had demoted Heffernan on the mistaken belief that he had engaged in protected speech – the result of which was to discourage other employees from engaging in protected speech or association. This harm, the Court noted, was the same whether or not the employer's action rested on a factual mistake.

The Court assumed that Heffernan was demoted based on the belief that he was supporting the current mayor's rival in the mayoral election. However, there was some evidence that he may have been demoted based on a neutral office policy prohibiting all police officers from any overt involvement in any political campaign. As a result, the Court sent the case back to the lower court to decide whether the police department may have acted under the neutral policy and whether such a policy, if it existed, complied with constitutional standards. *Heffernan v. City of Paterson*, No. 14-1280 (2016).

What it all means

It's important to note that the employer in this case is a *public* employer – the city of Paterson, New Jersey. The First Amendment states that “Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press.” This limitation applies to government actions (not private actions or private employers). Through the Fourteenth Amendment, state and local governments are also prohibited from infringing on those rights by law or by imposing rules (such as employment policies) that infringe on the right to the exercise of religion, free speech, and press.

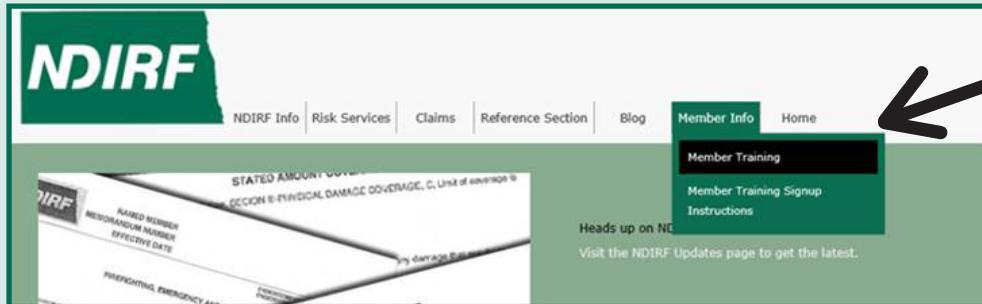
Other than laws regulating political contributions, there are no federal laws that regulate a *private* employee's political activity. Of course, employees have the right to maintain and express points of view on political issues. However, private-sector employers have the right to regulate and control employee work time. As a result, they are entitled to prohibit employees from engaging in political activity during work hours.

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RISK SERVICES

NDIRF MEMBER TRAINING CENTER REGISTRATION INSTRUCTIONS

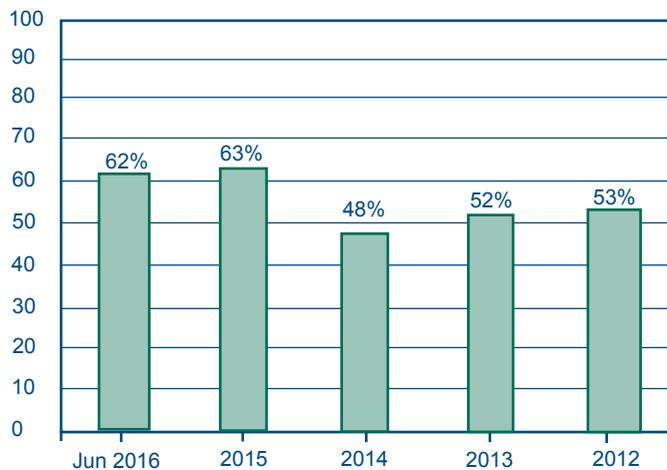
To create an account for your organization, select “Member Training” under the “Member Info” Tab at www.ndirf.com.



Once you select “Member Training”, you will be taken to our Member Training Center. **On the front page of the Member Training Center, please scroll to the bottom of the page and select “Account” to set-up your organization’s account.** *continued on Page 4*

FINANCIAL INSIGHTS

LOSS RATIO



The loss ratio is calculated by dividing incurred losses, including loss adjustment expenses, by earned premium. A ratio greater than 100% means incurred losses exceed premium income. The loss ratio for all years is 49% so, as the chart indicates, the first half of 2016 is a higher than average loss year. ■

FROM THE CEO

As I write this, in late July, the fall statewide association annual conference season is not that far away in terms of the need to plan for room reservations, absence from the office, etc., and I'd like to put in a pitch for you to think now about attendance at these events.

The NDIRF has always felt that member officials and employees stand to gain useful information – some of it the kind of knowledge that helps reduce liability and property risk – by participating in an annual conference of the political subdivision association applicable to your entity. Most of the time, once someone has experienced the value of training sessions like these, that's all the “push” needed to ensure a desire to return in following years for more of the same.

This year, in conjunction with the roll-out of NDIRF's new data breach coverage, we are furthering awareness of cyber risks our members face by facilitating presentations on this subject at the conferences. These sessions are designed to provide information on how to avoid data breach incidents and how to engage low or no-cost resources available to you to manage the risk or deal with a data breach if one occurs. Hope to see you there! ■

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RISK SERVICES

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Mark Your CALENDAR

- Sept
15-17: ND League of Cities
Annual Conference,
Ramkota Hotel, Bismarck
22: NDIRF Board of Directors Meeting
NDIRF offices, Bismarck
- Oct
9-11: ND Association of Counties
Annual Conference & Expo
Bismarck Events Center, Bismarck
28: ND School Boards Association
Annual Convention,
Ramkota Inn, Bismarck

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