

Free Speech Rights of Teachers, Police Officers, City Workers, and Other Public Employees

We all learned in elementary school that one of the rights that we have, as citizens of the United States, that is envied by others around the world is our right to free speech. Our teachers taught us that the First Amendment protects our right to say what we want without fear of punishment or reprisal by the government.

We also learned (sometimes the hard way) that the First Amendment does not protect us from being punished by our parents for our "free speech" when we lob a smart alecky remark in their direction or from rebuffs from our friends or peers when they disagree with or are hurt by what we say. And so just as a group of friends can refuse to associate with us because they disagree with our endorsement of a political candidate or because of an opinion expressed in a letter to the editor of our local newspaper, a *private* employer likewise can decide that it no longer wants to employ us because it disagrees with something we've written or said.

Things change, however, when our employer is the government. We do not give up our right to free speech just because we are employed by a city, school board, or other governmental entity. But our free speech rights as governmental employees are not unlimited.

A potential violation of a public employee's rights occurs when his or her employer takes an "adverse action" (firing or demotion, for example) in retaliation for an employee's speech on an issue of public interest relating to political, social, or other concerns of the community, outside of his or her employment duties. In contrast, First Amendment protection is not extended to a government employee's speech that involves internal office politics, concerns matters of only personal interest, or was made in the course of performing his or her employment duties.

So, a teacher who, in her spare time, authors a blog devoted to the unfair treatment of the homeless and is disciplined because of the opinions expressed in her blog, may have a federal claim against her employer, while her colleague who writes a letter to the editor complaining about his personality conflict with the principal of his school and is disciplined because of his letter, probably does not. The same is true for an employee who is disciplined for expression made in the performance of his job duties.

If an employee can demonstrate that he or she was disciplined or otherwise suffered an adverse employment action *because* of his or her speech on a matter of public concern, a court will balance the employee's interest in publishing his or her speech against the governmental employer's interest

in the effective and efficient fulfillment of its responsibilities to the public, which includes the efficient and successful operation of its office. In doing so, it must account for a range of interests. For example, the First Amendment rights of a teacher were found to be violated when he was fired because he sent a letter to the editor of a local newspaper criticizing the school district's past proposals for raising revenues for the schools. On the other hand, the First Amendment rights of a teacher, who claimed he was fired because of a four-page essay he emailed to his fellow faculty and staff members criticizing the school's dog therapy program and berating an unnamed staff member, were not. A police officer, who was fired because he made anonymous posts to the internet opposing the views of borough council members who had criticized the purchase of two high-velocity weapons for the police department, had a claim for violation of his First Amendment rights. Police officers, who were fired because they reported misconduct in their department "up the chain of command," did not. In many cases, the line between what is a matter of public interest and what is not, is blurred. The outcome of the claim, thus, depends largely on the facts developed on the record before the court.

Berkman, Gordon, Murray & DeVan, 55 Public Square, Ste. 2200, Cleveland, Ohio 44113, has successfully represented a number of public employees, including police officers, court staff and others, who have been retaliated against for exercising their free speech rights.