



What speech is protected for firefighters in the workplace?

The First Amendment to the United States Constitution protects five freedoms: the establishment and exercise of religion; the right to free speech; freedom of the press; the right to peaceably assemble; and the right to petition the government. This Amendment protects much public employee speech, but it is not an absolute protection. Some speech is not protected, including hate speech, threats, defamation, and obscenity.

Public employees enjoy the protection of laws that safeguard their free speech rights. In South Carolina, public employees' speech rights are also protected by S.C. Code Ann. § 16-17-560, a state law protection for employees' political activities.

The challenge is that every employee wears two hats, one of a private citizen and one of a public employee. In every case, the court must determine what role the employee was playing—public employee or private citizen—when their speech is at issue, and consider the following:

- **Was the employee speaking in their role as a private citizen or an employee?** Citizen speech is normally made outside ordinary job duties, often off-duty, and often about civic or political matters.
 - "Off-duty" does not necessarily mean citizen speech.
 - Speech outside of ordinary duties—even if informed by job experience—may be citizen speech.
 - Speech required by the job, internal reports, or assigned communications may not be protected.
- **Was the speech about a matter of public concern?** Public concern is likely when speech addresses:
 - Government policy or public safety
 - Election, civil rights, public corruption
 - School governance or matters affecting the community
 - Gun rights and gun regulation debates
- **What are the employer interests?** The government has an interest in preserving discipline, trust, confidentiality, and operational efficiency. Complaints and disagreements do not necessarily mean "disruption."
- **When does regulation cross the Constitutional line?** Discipline becomes unlawful when the employer punishes protected citizen speech without sufficient workplace justification. Violation of company policy does not necessarily mean constitutional justification. Examples:
 - *Berger v. Battaglia*: Off-duty blackface performance by police officer generated community objection; the restriction could not rest on that offense alone.
 - *Liverman v. Petersburg*: Police social media policy barring speech that reflected unfavorably on the department is unconstitutionally overbroad.

The common thread here is that Courts demand more than just managerial discomfort: the employer must connect the restriction or discipline to legitimate public-service operations.

As a general matter, if you are speaking (1) as a private citizen, (2) about a matter of public concern, and (3) your speech does not interfere with your job, your speech is protected.



How does South Carolina law protect free speech?

S.C. Code Ann. § 16-17-560 states:

“It is unlawful for a person to assault or intimidate a citizen, discharge a citizen from employment or occupation, or eject a citizen from a rented house, land, or other property because of political opinions or the exercise of political rights and privileges guaranteed to every citizen by the Constitution and laws of the United States or by the Constitution of the laws of this State. . .”

If you are fired for expressing your political opinions or any of the other protected forms of expression under the First Amendment, your employer is also liable under South Carolina law.

How will a court determine whether a public employer has violated an employee's free speech rights?

Courts use the “Pickering Test” to determine whether a public employer has violated an employee's free speech rights. The Court will balance “the interests of the employee, as a citizen, in commenting upon matters of public concern and the interests of the State, as an employer, in promoting the efficiency of the public services it performs through its employees” to determine whether an employer has violated an employee's rights.

The employer may consider actual or reasonably predicted disruption, impact on workplace discipline, harmony among coworkers, close working relationships, public trust, and the employee's ability to perform the job. But generalized offense, embarrassment, controversy, or strong disagreement is usually not enough.

If your employment is terminated because of something you said (or posted), the courts will consider whether what you have commented on is a matter of public concern and whether the speech caused

The City of Columbia has its own communications policy

In pertinent part it states: “*the electronic resources may not be used to solicit or proselytize for commercial ventures, religious or political causes, outside organizations, or other non-job related activities. The electronic resources may not be used to create any offensive or disruptive messages.*” If the City gives you an electronic resource, such as a cell phone or computer, for work, it is not to be used for purposes other than for work. Using these devices for political speech, even if otherwise protected, can open employees up to discipline.

In reference to social media: “[t]he policy respects an employee's right to post and maintain personal websites, blogs, and other electronic media, but is not intended to limit your right to freedom of speech or expression. As we are a public entity, it has been put in place to protect the rights of this organization[.] The City of Columbia requires personnel to act in a prudent manner with regard to website and social media postings that reference the City, its personnel, its property and the City of Columbia.” With this policy, the City is trying to balance the private rights of its employees as citizens and its interests as a public entity.

Free speech rights are the foundation of our Nation's freedoms. Before you post something to social media, it is important to consider whether your speech is protected.

Whether your free-speech rights have been violated depends on your specific situation. If you think your rights have been violated or if you have any questions regarding your First Amendment rights in the workplace, reach out to your union!

