

As a government employee, you still have a First Amendment right to speak out on important issues. However, your government employer also has an interest in promoting an effective and efficient workplace. In this guide, we break down your speech rights under the Constitution.

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.

However, there are exceptions. You can use the flowchart inside this guide to help you figure out whether or not particular types of speech are likely to be legally protected.

This guide does not provide specific legal advice, but rather provides an overview of this complex area of law. If you believe your rights have been violated, contact your agency's Inspector General, or the ACLU!

RESOURCES:

- » For more information about the Hatch Act, visit <https://osc.gov/Services/Pages/HatchAct-FAQ.aspx>
- » For more information about the Hatch Act's specific rules regarding social media, visit <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Social%20Media%20Guidance.pdf> (revised February 2018).
- » For more information about whistleblower protections, visit <https://www.whistleblowers.org/faq/>
- » For FAQs regarding public employees' speech rights, visit <https://www.workplacefairness.org/retaliation-public-employees/>

If you believe your rights have been violated, contact your agency's Inspector General, or the ACLU!

You can contact the ACLU-D.C. at intake@acludc.org or visit www.acludc.org.

Federal Employee Speech & the First Amendment: A Know-Your-Rights Guide



ACLU
District
of Columbia



START HERE

(Please note these are general principles—not legal advice. Contact an attorney if you have questions or need more information)

Your speech is not protected.

Your employer may take adverse action (e.g. firing, demoting, suspending you) because of your speech.

BUT

You may be protected against retaliation for whistleblowing (reporting employer actions that are illegal, abusive, or violate specific public policies). For more information about how you may be protected as a whistleblower, and how to make a claim in response to retaliation, please visit <https://www.whistleblowers.org/faq/>



Are you a high-level employee, or a political appointee?

What is a “high-level employee”?
Generally, this means an employee who has “broad responsibilities with respect to policy formulation, implementation, or enunciation” at the employee’s government office.

YES

NO

Are you seeking to release classified (or otherwise sensitive) information?

YES

NO

Are you speaking about a matter of public concern?

What is a “matter of public concern”?
Speech that is of political, social, or other concern to the community. Speech that would help the public make informed decisions about how government operates (e.g., a teacher’s public comment at a community meeting about the school board budget).
Not: Internal personnel disputes and grievances.

NO

YES

Is this type of speech normally part of your job duties and/or are you speaking in your official capacity?

Speech about non-confidential information learned on the job may be protected, as long as the speech is not part of your job (e.g., an employee at a homeless shelter who knows the shelter is turning people away can write a blog post advocating more funding).

YES

NO

Does your speech disrupt your employer’s interest in an efficient workplace?

When does speech disrupt an efficient workplace?
It depends. Relevant factors include the manner, time, and place of the speech; whether the speech impairs discipline by superiors or harmony among co-workers; whether the speech detracts from work relationships that require loyalty and confidence; and whether the speech impedes performance of the employee’s duties or the office’s operations generally. The extent of disruption is balanced against the speaker’s interest in the speech in question.

YES

NO

Your speech may be protected!

What does that mean?

Your employer may not, because of your speech, fire, demote, or suspend you, significantly change the terms and conditions of your employment, or (as interpreted by most federal courts) take any action that would likely deter a reasonable person from speaking.

An employer has acted “because of your speech” where the speech was a “substantial or motivating factor” behind the act.

But your employer always can take adverse actions for a legitimate reason, and it would have the opportunity to show that it would have taken the same action in the absence of the protected speech at issue.

BUT

Even if your speech is protected, you should be aware of whether your agency has additional rules governing employee speech.

E.g. the Office of Legal Advisor’s guidance on political activities, including on social media, to Department of State employees: <https://afsa.org/rules-political-activities-federal-employees>

Your speech may be otherwise limited by the Hatch Act.

(These are very general principles. For more information, please visit <https://osc.gov/Services/Pages/HatchAct-FAQ.aspx>)

- You may:**
- Contribute money to partisan groups and candidates in partisan elections
 - Be active at political rallies and meetings, and in partisan groups
 - Express opinions about political issues and partisan groups and candidates while not at work or using official authority

- You may not:**
- Invite subordinate employees to political events or suggest that they engage in political activity
 - Knowingly encourage or discourage political activity of people you work with
 - Solicit, accept, or receive political contributions while on duty, in the federal workplace, or wearing a uniform or official insignia.
 - Engage in political activity (including on social media) while on duty, in the workplace, wearing a uniform or official insignia, or in a government vehicle