



## **Federal Worker Rights: Free Speech Rights and Whistleblowing**

Federal employees do not forfeit all rights to free speech because they work for the federal government, but there are limits. Speech that is *part of your job duties*, such as a memo written as part of your assigned work, is not protected by the First Amendment.

If the speech is not part of your job duties, your speech *may* be protected by the First Amendment depending on your unique situation. Courts will weigh your free speech rights against your employer's interest in preventing disruption of the workplace to determine whether your employer violated your First Amendment rights.

Currently, the federal government is fighting to restrict the free speech rights of government employees and close outlets for them to express dissent and safely report wrongdoing. Protection of employee rights of dissent, whistleblower protections, and First Amendment rights is critical.

Below are general guidelines for First Amendment and free speech rights of federal employees. Note that some speech not protected by the First Amendment may be protected by whistleblower laws or official agency channels for dissent.

### **What if you want to speak on a topic not related to your job, your agency, or the federal government?**

**Be clear that you are speaking as a private citizen and not as a government employee or as part of your job duties.**

A federal employee who wants to speak publicly on matters not related to their job, the agency they work for, or the federal government may do so with few restrictions, since it cannot be claimed that such speech in any way disrupts their workplace.

- Speak only as a “private citizen”:
  - You should be “off the clock,” not during work hours, not using government resources, and not using your job title or wearing a work uniform, or other clothing that identifies your employer or government insignias.
  - Don't reference your job or the federal government.

- You cannot make offensive remarks that target individuals or communities because of their racial, ethnic, or religious identity.
- You cannot appear to advocate or support violence.

### **What if you want to speak on a topic related to your job, work of your agency, or federal government in general?**

#### **There are limits on this type of speech.**

A federal employee who wants to speak on a topic related to their job, their agency, or the federal government will face greater restrictions, because such speech has the potential to disrupt the workplace.

Again, you should make clear that you are speaking as a private citizen or as part of your “official job duties.”

#### **As a Private Citizen**

Generally, your statements about topics of public concern are protected by the First Amendment. Your comments should not involve your job or your job duties, not contain confidential information, and not disrupt the workplace. If these restrictions are met, your speech may be informed by your experience working for the government.

- Example: you work for the Environmental Protection Agency (EPA) on the federal Clean Water Act, and you write a letter to a newspaper on your own time commenting on local air quality issues **without** identifying yourself as working for EPA.
- Example: you work for the EPA on the federal Clean Water Act and write a letter to a newspaper with concerns about general agency budget and staff cuts and how they are affecting environmental protection. You can say that your opinion is informed by your work at EPA but make explicit that you are speaking as a citizen, not an EPA employee.
- Note: Federal employees are being targeted for their private speech as private citizens. Some who have been fired for this speech are challenging actions taken against them by their employers.
- Employees may generally participate in advocacy towards other agencies as private citizens.

Those in leadership positions or public facing positions will be held to a higher level of scrutiny by their employers about their public pronouncements because of the government’s interest in ensuring an efficient workplace.

### **As Part of Your Official Job Duties**

If you are speaking about your work or your agency as part of your official job duties, your speech is not protected by the First Amendment.

- Exception: There may be exceptions for teachers and professors who express their views while teaching in the classroom.

### **What if you want to dissent publicly on Agency actions?**

You should speak with an attorney to understand your First Amendment protections and your whistleblower rights before making any public declarations of dissent. This will help ensure that your dissent is crafted in a way to afford you the maximum protection under the law.

### **What if you want to speak publicly or privately about wrongdoing in your agency?**

Public service does not mean blind obedience to one's supervisors or subservience to an agency or president that subverts the law or engages in wrongdoing. However, the government may retaliate against those who speak out against wrongdoing.

### **Whistleblowing as a Potential Defense to Adverse Personnel Actions**

Whistleblower statutes allow most federal civil service employees who make protected disclosures to challenge adverse personnel actions. Examples of protected disclosures include:

- A violation of law, rule or regulation;
- Gross mismanagement or abuse of authority; or
- A substantial and specific danger to public health or safety.

Disclosures are protected regardless of to whom they are made, including:

- Congress
- Office of Special Counsel
- Offices of Inspectors General
- Supervisors and managers
- Co-workers
- The press

You must be able to show that the managers who took the action against you knew about your disclosures and retaliated against you for them.

If you are considering blowing the whistle, or disclosing wrongdoing, [get legal advice](#) on how to do it in a way that will be protected by whistleblower laws. If you have already been fired or disciplined for speaking out, you may be able to use a whistleblower defense to a disciplinary action.

*The information presented here is not legal advice, is not to be acted on as such, and is subject to change without notice.*

###