

Government Workers' Rights

YOUR LEGAL RIGHTS

1. How do I know if I am a government employee?

Any person who works for the U.S. government, the State of California, a local city or county, or any other public employer, such as a school district or transportation agency (e.g. Bay Area Rapid Transit) is a government or “public sector” employee. Those employees have employment rights that are often different than the rights given to employees who work for non-government, or “private” employers.

2. As a government employee, am I protected by the U.S. or California Constitution in the workplace?

When the government is your employer, its decisions are generally covered by the U.S. or state Constitution protections, such as freedom of speech.

3. As a public employee, am I protected by the First Amendment (Freedom of Speech) while I am working?

A government employee’s speech may be protected if the employee made the speech in her capacity as a *citizen*. On the other hand, a public employee does *not* enjoy First Amendment protection when her speech is not made as a citizen under the First Amendment, but instead was made solely pursuant to the employee’s official duties. For example, government employees who write to a local newspaper regarding the policies of their government employer, who discuss politics with co-workers or who make public statements outside the course of performing their official duties, retain First Amendment protection because their activities also could have been engaged in by people who do not work for the government.

Although you enjoy the constitutional right of freedom of speech in the workplace, your government employer still has some leeway in protecting its own operations and policies. To resolve this tension between your employer’s interests and your free speech rights as a public employee, the United States Supreme Court created a two-part test.

- **First, is the free speech protected as a matter of public concern?**

For your speech to be protected, it must address a “matter of public concern.” A matter of public concern is one that is related to “any matter of political, social, or other concern to the community.” For instance, if a firefighter were to criticize the city’s preparedness for a fire, this would be a “matter of public concern.” On the other hand, speech that relates to a purely private interest or an isolated workplace complaint is usually not considered a matter of public concern.

● **Second, if my speech is a matter of public concern, does my right to free speech outweigh my employer’s business reasons for restricting such speech?**

If your speech is a matter of public concern, then your interest in expressing yourself is weighed against any injury this speech could cause to your employer. Speech interferes with the government employer’s interest if it impairs discipline or work relationships, or gets in the way of your duties or administration of public service. For example, the government is allowed to prohibit its employees from using offensive speech to the public or other co-workers and your employer is given wide-latitude in responding to that speech in the workplace. Also, an employee’s interest in criticizing his employer’s hiring decisions, though normally a matter of public concern, was found by a court not to outweigh the employer’s interest in avoiding disruption at work.

4. **Are my co-workers allowed to harass me and claim that their speech is protected?**

No. If a co-worker is using speech that harasses you based on something like your race, gender or national origin, a court could stop that speech through an “injunction” even if the result would limit your co-worker’s speech rights. The court’s order must be specific and narrow enough to fix the discrimination or harassment.

5. **May I be fired for associating with someone my employer does not want me to?**

If you are fired for being friends with, or spending time with, someone your government employer doesn’t like, then your government employer may be in violation of your First Amendment right of freedom of association. You will have to show that your conduct was a “substantial” or “motivating” reason for being fired. If you are able to do so, your employer is liable unless it can prove that you would have been fired even if you had not associated with this person.

6. **Can my employer fire me for the political activities I engage or choose not to engage in?**

Public employees often decide to engage in political activities; such as bringing lawsuits, associating with others for political purposes, and non-disruptive forms of political expression. California’s Labor Code protects California public and private employees who engage in those types of political activities. There are also other state and federal protections that prohibit employers from attempting to coerce public employees or influence their political activities by threatening to fire or discipline them.



7. Can my government employer restrict my religious practice or conduct?

A government must meet a very high standard in order to justify restricting the religious practice of an employee, such as wearing a religious garment. If your employer were to restrict your religious practice, it would have to show that there is a compelling reason for restricting your religious freedom and that the restrictions were narrowly tailored to carry out that reason.

8. Am I protected against discrimination in my government job?

Yes. Title VII of the Civil Rights Act of 1964 gives governmental employees the same rights and protections against unlawful discrimination as private employees. Title VII forbids employers from firing, failing to hire, or discriminating against an employee with respect to compensation, terms, conditions or privileges of employment because of an employee's race, color, sex, national origin, religion or pregnancy.

Additionally, the Age Discrimination in Employment Act (ADEA) protects all government employees. Under the ADEA, an employer may not discriminate based on an employee's age if the employee is at least 40 years old.

9. If I disclose illegal acts by my employer, am I protected?

Federal, state, and local government employees are protected from retaliation for reporting improper government activities, including illegal or economically wasteful acts, severe misconduct, incompetence, and inefficiency.

10. If my government employer has violated my workplace protections, where do I go to get help?

Because federal, state, and local government workplace protections are complicated, you should talk to your union representative and/or an attorney to find out how to fix the problem and get help in the future. To locate an attorney, contact your local bar association or www.lawhelpcalifornia.org.



This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

For further information about your employment rights, please call:

The Workers' Rights Clinic

415-864-8208 (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers' Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

