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THE INTERSECTION OF SOCIAL MEDIA, POLITICAL EXPRESSION, AND EMPLOYMENT LAW: NAVIGATING AN EMERGING TREND IN WORKPLACE DISCIPLINE

Article

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In recent years, social media has become the new public square as many express their views on issues of political importance. Whether the subject is the war in the Middle East, the ongoing conflict between Russia and Ukraine, the U.S. presidential election, or the assassination of political figures, employees increasingly take to platforms such as X (formerly Twitter), Facebook, Instagram, and TikTok to share their views. These posts are often made in real time, are highly visible, and can go viral well beyond the author's intended audience. Employers, keenly aware of public perception and the potential impact on their brands, are responding with swift and severe measures. Employees are being terminated, suspended, or placed on administrative leave based on their online speech.

The Charlie Kirk Aftermath

The death of conservative activist Charlie Kirk in September 2025, and the wave of employment-related consequences that followed, highlight the precarious terrain at this intersection. After Kirk's assassination, CNBC terminated a reporter following social media comments about his death. Other employees in various industries faced disciplinary measures for posts that either celebrated or condemned the event. These actions underscored the speed with which employers are now policing personal speech, as well as the broader social divide over how far employers should go in holding employees accountable for political commentary outside the workplace.

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The Blurred Line Between Personal and Professional Spheres

Employee conduct outside the workplace reflects on employers in varying degrees. Following viral controversies such as the "Coldplay affair" social media blitz, the number of online searches for the tech company, Astronomer, skyrocketed, drawing widespread media attention and consumer backlash. The pervasiveness of social media has dramatically expanded the scope of what employers see and how quickly they feel compelled and/or pressured to act. When an employee publicly posts commentary perceived as antisemitic, Islamophobic, racist, misogynistic, or politically inflammatory, employers face immediate reputational risk. Media coverage or the account itself often identifies the employer by name causing such results as organized boycotts by advocacy groups, or coworkers alleging that the post creates a hostile workplace.

Examples abound: an employee making derogatory comments about Middle Eastern groups during wartime, a staff member celebrating or condemning a controversial political leader, or a worker posting inflammatory views after a domestic assassination or political rally. Employers increasingly err on the side of decisive termination rather than risk reputational harm or workplace discord. This is not confined to any one industry. Universities, law firms, hospitals, financial institutions, and tech companies have all faced public scrutiny due to an employee's online activity. The message to employees is clear. The line between personal and professional spheres has blurred, and online speech can carry significant professional consequences.

Legal Framework: At-Will Employment Versus Employee Rights

At the foundation of U.S. employment law lies the doctrine of at-will employment, which allows employers to terminate employees at any time, for any lawful reason, or for no reason at all, so long as the termination is non-discriminatory and does not violate a contract, statute, or public policy. This broad discretion, however, is not unlimited. Courts and legislatures have carved out significant exceptions that become particularly relevant when termination is tied to employee speech.

Generally, private-sector do not enjoy First Amendment protection for political speech in the workplace. The Constitution restrains government actors, not private employers. Thus, while a public employer disciplining an employee for political speech implicates constitutional concerns, a private employer's decision to terminate usually does not.

In *Pickering v. Board of Education*, 391 U.S. 563 (1968), the Supreme Court established a balancing test for assessing public employee speech rights. Courts weigh the employee's interest in speaking on matters of public concern against the employer's interest in maintaining discipline, workplace harmony, and efficiency. Subsequent cases have refined this test, emphasizing the importance of context, time, place, and the employee's role.

For example, in *Jones v. Board of Regents University System of Georgia*, 262 Ga. App. 75 (2023), the court emphasized that speech must be made primarily in the employee's role as a citizen, not in their official capacity as an employee, to qualify for protection. Even then disruption to workplace discipline or operations can justify restrictions. In *Garcetti v. Ceballos*, 547 U.S. 410 (2006) the court held that a public employee must show: (1) speech as a citizen on a matter of public concern, (2) an adverse employment action, and (3) that speech was the motivating factor in the decision. Yet even when these elements are met, employers may prevail if they can reasonably predict disruption that outweighs the speech's value. *Heller v. Bedford Central School District*, 144 F.Supp.3d 596 (2015).

Federal regulations also reflect this balance, permitting federal employees to vote, express opinions, and participate in nonpartisan civic activity, but restricting political activity that interferes with official duties or undermines agency neutrality. (see C.F.R. §733.105; 5 C.F.R. §151.111; 45 C.F.R. §73.735-602; 45 C.F.R. §73.502).

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State Law Protections for Off-Duty Conduct

Some states extend explicit statutory protections to employees for lawful off-duty political speech and activity. California Labor Code §§1101-1102 prohibits employers from controlling or directing employees' political activities and from retaliation against employees for political expression. New York Labor Law §201-d similarly protects employees' lawful off-duty conduct, including political activities, while Colorado Revised Statute §24-34-402.5 provides comparable protections. Courts applying these laws often weigh whether an employee's expression undermines legitimate business interests, making each case fact intensive.

Anti-Discrimination and Retaliation Concerns

Anti-discrimination and retaliation statutes further complicate matters. Federal and state law prohibit adverse actions motivated by an employee's race, religion, national origin, or other protected status. A termination tied to a post about the Israel-Hamas conflict, for example, could lead to claims of religious or national origin discrimination if the discipline disproportionately affects one group.

Union Employees

Unionized employees may also look to "just cause" provisions in collective bargaining agreements, which limit the employers' ability to terminate for off-duty conduct without a demonstrated workplace nexus. Moreover, under the National Labor Relations Act, employees engaged in "concerted activity" for mutual aid and protection may be shielded from discipline. Even personal social media posts about workplace conditions, pay equity, or organizing efforts, even if published on personal accounts, can fall under this protection. In *NLRB v. PierSixty, LLC*, 855 F.3d 115 (2d. Cir. 2017).

In sum, employees retain free speech rights, but those rights are not absolute. Public employees must navigate the complex balance between First Amendment protections and government employers' operational needs. Private employees, meanwhile, rely more heavily on state statutes, anti-discrimination laws, and contractual protections. Across both contexts, courts apply nuanced analyses, ensuring that speech restrictions are justified by legitimate interests and are not so broad as to unduly burden constitutional freedoms.

Litigation Risks and Court Approaches

When employees challenge disciplinary actions linked to political social media activity, they frequently assert wrongful termination in violation of public policy, discrimination, retaliation, or breach of contract. Courts analyzing these disputes generally weigh the employee's right to lawful off-duty conduct against the employer's legitimate business interests. Outcomes often hinge on whether the speech created a tangible workplace disruption directly in conflict with the employer's operations. For example, a nurse posting radically charged comments that undermine patient trust in a hospital may justify termination, while a teacher expressing general political views outside the classroom may present a closer question. Even when employers ultimately prevail, litigation is costly and reputationally damaging. Publicized lawsuits can magnify the very controversies employers sought to quell by acting quickly.

Employer Rationales and Potential Liability

Employers typically justify termination decisions on grounds such as protecting reputation and brand integrity, preventing hostile work environments, meeting client and customer expectations, and preserving workplace productivity. These rationales are practical and often legally defensible, provided employers apply policies consistently and avoid discriminatory enforcement.

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Nonetheless, pitfalls remain. Selective enforcement can trigger discrimination claims under Title VII. Overreach into employee speech risks unfair labor practice charges under the NLRA. Monitoring private or restricted-access accounts may invite privacy challenges, while mischaracterizing employee speech in termination announcements can result in defamation claims. In states recognizing implied covenants of good faith, arbitrary, or pretextual terminations may face additional hurdles.

Practical Guidance for Employers

To mitigate these risks, employers should:

- Develop clear social media policies that define expectations, provide examples, and articulate consequences.
- Ensure consistency in enforcement so that similarly situated employees are treated alike, minimizing the risk of discrimination claims.
- Balance discipline with business necessity, considering less severe measures such as warning or suspension before termination.
- Train managers and HR leaders on lawful enforcement practices to avoid missteps.
- Document decisions carefully to establish legitimate business reasons for adverse actions.
- Consult with legal counsel before acting, especially when speech implicates sensitive issues such as religion, race, or political affiliation.

Conclusion

The intersection of social media, political expression, and employment law reflects a profound societal shift. What once were private conversations now unfold on public platforms accessible to millions. Employers, acutely aware of reputational and legal risks, are responding with unprecedented vigilance, often terminating employees for speech they deem inconsistent with organizational values. This trend presents a delicate balance. Employees understandably wish to engage in political discourse, while employers must safeguard their brands, workplace harmony, and compliance obligations. The legal terrain is nuanced, varying by jurisdiction and context. Both employers and employees should proceed with caution, guided by clear policies, informed counsel, and an understanding that the line between personal speech and professional consequence has never been thinner.