

Free Speech In The Private Workplace

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If you are a private employer, chances are you have had an employee claim that their constitutional “right to free speech” has been violated. Such a complaint begs the question: Do employees have free speech rights in a privately owned workplace? The answer is that employees who work for private employers do not have a constitutional right to free speech. The First Amendment’s guarantee of free speech addresses the rights of citizens regarding their relationship to the government. An employer can limit free speech; however, there are constraints on how much employee free speech may be regulated. Private employers must make sure that the limits they impose on employee speech do not take away an employee’s right to speak out about violations of any of the employment laws or to engage in “concerted activity.”

Private Employers Have A Right To Curtail Speech In The Workplace

Contrary to the claims employees sometimes make, they do not have freedom to say whatever they choose in a private workplace. An employer can have a policy that regulates certain speech in the workplace to establish the type of workplace environment that they desire. For example, an employer, in an effort to create a civil workplace, might forbid the use of curse words or the discussion of politics. An employer may also curtail employee speech if that speech violates federal or state anti-discrimination laws. An employee does not have a right to voice an opinion expressing prejudice or discrimination in the workplace, and an employer can discipline an employee for making such discriminatory statements.

Limits On A Private Employer’s Regulation Of Speech: Do Not Violate The New Jersey Conscientious Employee Protection Act Or The Anti-Discrimination Laws

An employer cannot discipline an employee for complaining about discrimination or harassment in a private workplace without potentially running afoul of the employment laws. An employer also cannot retaliate against employees who object to (or refuse to participate in) activity that an employee reasonably believes is fraudulent, illegal, criminal or is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or the protection of the environment. Disciplining an employee for this type of free speech (“whistleblowing”) violates the New Jersey Conscientious Employee Protection Act (“NJCEPA”).

Private Employers Must Ensure They Do Not Discipline Employees Who Engage in “Concerted Activity”

Under the National Labor Relations Act (“NLRA”), employers cannot discipline (non-supervisory) employees who act with co-workers to address work-related issues. Examples of this include: talking with one or more co-workers about wages and benefits or other working conditions, circulating a petition asking for better hours, participating in a concerted refusal to work in unsafe conditions, openly talking about pay and benefits, and joining with co-workers to talk directly to an employer, government agency, or to the media about problems in the workplace.

TAKEAWAY: Private Employers have rights to control employee speech in the workplace. However, if doing so, employers must be conscious that they do not restrict employee speech that implicates the federal and state anti-discrimination laws, NJCEPA or constitutes “concerted activity.” If you have questions on employee speech in the workplace or any federal or New Jersey employment law, contact [Stephanie Gironda](#) or any member of the Wilentz [Employment Law](#) Team

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