



# WORKPLACE LAW PARTNERS

**Politics, Posts, and Pink  
Slips: Regulating  
Internet Speech in the  
Modern Workplace**

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# Today's topics

Online communications in the workplace

Employers: *Can we fire someone for what she posted?*

Employees: *Do we have any right to speak our minds without risking our jobs?*

Public vs. Private sector

On-duty vs. off-duty speech

National Labor Relations Board (NLRB)

Illinois Statutes

# Workplace Cancel Culture

People on both sides of the spectrum risk losing their job for what they say online.

Liberals for what they say about Charlie Kirk

Conservatives for January 6 comments.

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GOVERNMENT AND INSTITUTIONS Published September 15, 2025 12:32pm EDT

## 8 employers that fired staff for mocking Charlie Kirk's assassination

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By Pilar Alon FOXBusiness

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GLOBAL INDEXES 23.80 ▲ 0.01 (+0.04%)

FT CHINA 2022 CHN 11,847.59 ▲ 251.47 (+2.14%)

Sen. Rand Paul describes 'disturbing' reactions to Charlie Kirk assassination

Sen. Rand Paul, Rep. James Comer & Co. 'to discuss the legacy of political activist Charlie Kirk and responses to his death'

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## Producer sues Fox News, claims he was fired for challenging Jan. 6 coverage

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By Will Sommer

A former Fox News producer is suing the network in federal court, alleging that he was fired for challenging its coverage of the Jan. 6, 2021, insurrection at the U.S. Capitol and the false claims of voting fraud that fueled the...  
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# I. Social Media and the Modern Workplace: Perils and Prevalence

# The New “Water Cooler”

- Social media is the virtual water cooler of the modern workplace.
- Vent about jobs, share political opinions, or discuss social issues online for all to see.
- **Create tension with employers** who worry about the company’s reputation or workplace harmony.
- *Example:* A PR executive’s ill-conceived tweet (“Going to Africa. Hope I don’t get AIDS. Just kidding, I’m white.”) in 2013 went viral and led to her firing before she even landed from her flight.





# Why Employers Care: Companies often justify such firings by citing business interests:

- Public image or customer relations.
- Off-duty statements **indicate poor judgment** or conflict with the employer's values or mission.
- Potential **hostile work environment** claims if an employee's posts offend or harass colleagues (e.g. racist or sexist remarks visible to co-workers can create workplace liability).

HR DEPARTMENT EXPLAINING WHY EXACTLY YOU WERE FIRED



## II. Public vs. Private Sector Employees: Two Different Rulebooks

- **Public sector employees** (government workers) enjoy constitutional free speech protections that **private sector employees** do not.
- Let's unpack the differences:

# A. Public Employees and First Amendment Rights



**Basic Rule:** The U.S. Constitution's First Amendment protects individuals from government censorship or punishment for speech. When the government is the employer, it faces constitutional limits if it tries to fire or discipline workers for their speech.

However, this protection is **not absolute** – it's balanced against the government's need to run an effective workplace.



**The Pickering Test:** In *Pickering v. Board of Education* (1968) Supreme Court established test to determine when a public employee's speech is protected



# The Pickering Test



- **Private Citizen on a Matter of Public Concern:** First, the employee must have been speaking as a private citizen (not as part of their job duties) on an issue of public concern. Topics like politics, social issues, or government policies are usually public concern.
- **Balance vs. Disruption:** If the above is met, a court balances the employee's right to free speech against the government employer's interest in an efficient, disruption-free workplace. If the speech *significantly disrupts* operations, undermines discipline or trust, or impairs working relationships, the employer can lawfully discipline despite the speech's value. In other words,
- *"Is the juice worth the squeeze?"* If an employee's contentious post causes a school, police department, or agency to practically grind to a halt with conflict or public outrage, the agency may be justified in firing them.



## On-Duty vs. Off-Duty for Public Workers:

Public employees speaking *pursuant to their official duties* get **no First Amendment protection** (per *Garcetti v. Ceballos*, 2006).



For example, a police officer writing an *off-duty* Facebook post about local election politics is speaking as a citizen on a public issue--

**But a post divulging confidential case information or insulting a specific coworker might not count as protected citizen speech at all.**

# More Examples

- **Protected Speech.** An Illinois state employee writes an off-duty letter to the editor criticizing the governor's public-health policy. It addresses public concern and causes no real workplace disruption. Demoting the employee would likely violate the First Amendment because the individual spoke as a private citizen on public policy.
- **Unprotected Speech.** A public high-school teacher posted inflammatory Facebook comments about the George Floyd protests. The posts led to more than 100 complaints, significant school disruption, and media attention. The Seventh Circuit upheld her termination, finding that—even though she spoke on public issues—the disruption “seriously interfered” with school operations. Off-duty political speech can be disciplined when it undermines the workplace.

# Bottom Line for Public Sector:

- Public employees **do have First Amendment rights**, especially for political or social speech off-duty, but those rights are limited. The speech is protected only if it's as a citizen on public concern *and* it doesn't cause undue disruption that outweighs the value of the speech.

## B. Private Employees – “At Will” and Little Protection for Speech

**No Constitutional Shield:** In the private sector, the **First Amendment does NOT apply.**

**Employment At-Will:** Illinois (like most states) is an “at-will” employment state.

# Key Exception – Protected Activities

**1. Labor Law (NLRA)**

**2. Anti-Retaliation/Discrimination Laws**

**3. State Statutes**

**4. Employment Contracts/Policies**



# National Labor Relations Act (NLRA)

## Protecting “Concerted” Employee Speech

One of the most significant federal protections for private employees’ speech is **Section 7 of the NLRA** (29 U.S.C. § 157).



Protects employees’ right to engage in “concerted activities” for mutual aid or protection, which includes discussing or complaining about **terms and conditions of employment**.



Simply put, employees (even non-union employees) have a *right to talk about their workplace, pay, and conditions, and to act together to improve them*. And that right extends to social media posts.



# Protected Concerted Activity Defined:

- **Concerted** (done with or on behalf of coworkers, not purely personal) and about a workplace issue.
  - **Other employees join in, comment, “like,” or it’s intended to induce group action,** it can become “concerted activity.”
  - “My manager is unfair and underpays us – anyone else frustrated and want to talk to HR or the press?”

# An example:

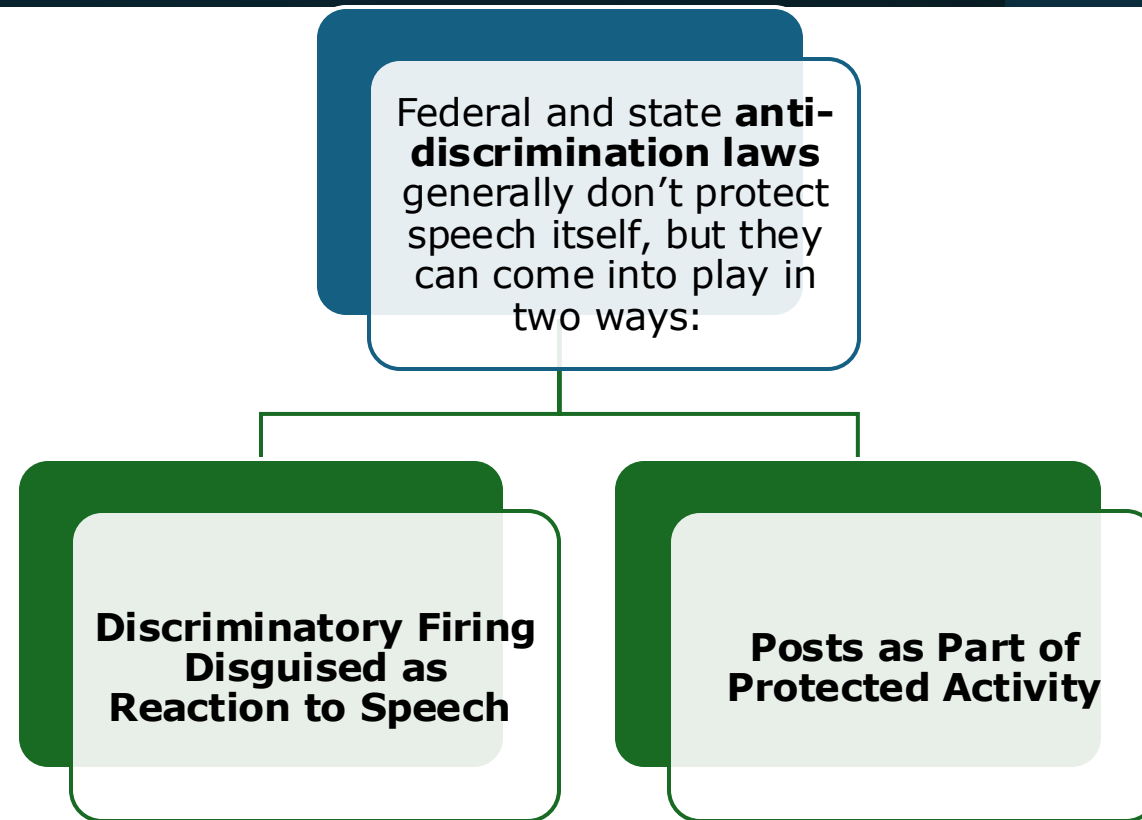


# Employer Social Media Policies:

- Overly broad social-media rules like “Employees may not disparage the company or any managers” have been struck down because they could chill Section 7 rights to discuss workplace issues.
- Employees must be free to criticize management or talk about pay, even if the employer views it as “disparaging.”
- Policies should be narrowly tailored. Banning threats, hate slurs, or disclosure of confidential information is permissible, but banning all negative comments about the company is not.

I will protect mine and my teammates' work culture by promising to never post photos, screenshots, or personal information about them or myself regardless of how harmless it may seem without consent and approval. I will resolve any and all matters with my employment or discourse with a client in a professional manner by speaking directly with them and will not post to social media platforms in an effort to blackmail, harm the reputation of, or sway the decision or opinions of others.

## 2. Anti-Discrimination Laws – When Posts Tie Into Protected Traits



# Discrimination Disguised as Reaction to Speech:



- Company fires an exotic dancer after she announces pregnancy on social media, citing a “professional image” rule. This scenario points toward pregnancy discrimination.
- Employer routinely ignores controversial posts by employees but abruptly fires a Muslim employee for a pro-Palestinian post. The inconsistent enforcement may indicate that the real motive was the employee’s religion or ethnicity.



# Posts as Protected Activity:

## Retaliation:

- African American employee posts an Instagram video describing racist treatment by a supervisor, and the company fires them for “airing dirty laundry.” That termination likely violates anti-retaliation laws because the post is a complaint about discrimination, which is protected activity under Title VII and similar statutes.
- Illinois Whistleblower Act: An employee who posts about their employer’s illegal conduct on social media is generally engaged in protected whistleblowing and cannot be fired for it.
- Tweeting: “My company is dumping toxic waste!”



# Lawful Products Off- Duty:

## Illinois Right to Privacy in the Workplace Act (IRPWA) – 820 ILCS 55

- An Illinois employer may **not fire or refuse to hire someone for using “lawful products” off the employer’s premises during non-working hours.**
- “Lawful products” basically means things that are legal to use or consume. This originated to protect smokers (marijuana is a lawful product – you can’t fire someone just because they smoke weed at home)
- Is a “lawful products” social media?

# Social Media Account Privacy:

- IRPWA was amended to **prohibit employers from demanding access to an employee's personal social media accounts.**
- Concretely, an employer **cannot ask for your Facebook or Instagram password, cannot demand that you log in and let them snoop, and cannot force you to "friend" them or otherwise grant access to your private account.**
- Employers *can*, however, still **look at anything you post publicly.** If your Twitter feed is public and you tweet something controversial, IRPWA doesn't stop the employer from viewing that and acting on it. The law just stops them from coercing access to your private communications.



## 4. Illinois Personnel Record Review Act – Privacy of Personal Activities (820 ILCS 40)

- The Illinois Personnel Record Review Act (PRRA) gives employees the right to access and correct their personnel files, but it also has an interesting **privacy provision (Section 9)** that relates to our topic
- **Section 9 Restriction:** Employers in Illinois are **prohibited from gathering or keeping records of an employee's "associations, political activities, publications, communications or nonemployment activities"** unless the employee **submits that information voluntarily in writing or authorizes the employer in writing to keep it.**



## III. Practical Tips and Takeaways

# For Employers:

- **Have a Clear, Legal Social Media Policy.** Focus on real risks: no confidential-info leaks, no harassment, no false product statements. Avoid sweeping bans on “negative comments.” Include a savings clause clarifying that the policy does not restrict legally protected speech. Train managers on proper enforcement.
- **Be Consistent.** Apply the rules uniformly. Selectively punishing employees based on their viewpoints, politics, religion, or background invites discrimination and retaliation claims.
- **Monitor Illinois Laws.** Stay current on Illinois-specific rules affecting workplace speech, privacy, and off-duty conduct to ensure the policy remains compliant.





# For Employees (and their Lawyers):

- **Know Your Audience.** Public-sector employees have some constitutional protection for off-duty speech on public issues, but not if the speech causes significant workplace disruption. Private employees generally do not have that protection.
- **Assume Your Boss Will See It.** Even “private” accounts can be screenshot and shared. If you don’t want your employer to see it, don’t post it.
- **Is Your Post Protected Activity.** Work complaints framed as group or collective issues are more likely to be protected under the NLRA. “We keep working 12-hour shifts with no overtime pay” is far safer than “My manager is an idiot.”
- **Think Before You Post.** Keep accounts private, limit audiences, and be mindful that online comments can spread far beyond your intended viewers.





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#Thank You

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