

CHRISTIAN RIGHTS IN THE WORKPLACE

Government Employees

Government employees are protected by both Title VII and the United States Constitution against religious discrimination. Public employees do not forfeit their First Amendment rights upon entering the public workplace [44]. Therefore, the religious freedom of government employees has the additional protection of the Free Exercise and Free Speech Clauses of the First Amendment to the United States Constitution. This chapter explains how government employees are protected by the First Amendment above and beyond the protection they have from Title VII.

Q: As A Government Employee, Is All My Religious Speech At Work Protected By The First Amendment?

A: A public employee receives greater speech protection when speaking "as a citizen upon matters of public concern" than he does when commenting on employment matters of personal or internal interest [45]. When evaluating these cases, the Supreme Court has traditionally utilized a test which balances the importance of the employee's speech on a matter of public concern against the government's need to run an efficient workplace [46]. Religious speech will always be a matter of public concern.

For example, in *Tucker v. State of California Dept. of Educ.* [47], a federal Court of Appeals found religious speech to be a matter of public concern, and used *Pickering* to protect the religious liberties of a state education department employee who believed that he was commanded to "give credit to God for the work he perform[ed]." He engaged in religious discussions, and kept religious material around his work area. Tucker prevailed when the court weighed the state's asserted interests of efficiency, protecting the liberty interests of other employees, and avoiding Establishment Clause issues against the weight of a "broad ban on group speech." The court rejected the employer's contention that the religious speech reduced efficiency since other types of non-work related speech were permitted. The court also rejected the argument that the employee's speech violated the Establishment Clause because there was no way it could have been attributed to the state.

Therefore, religious speech of government employees will always be protected so long as it does not significantly reduce efficiency in the workplace, and so long as it will not be attributed to the government employer.

Q: As A Government Employee, Can I Keep Religious Items In My Personal Work Area?

A: The First Amendment also protects the right of public employees to keep items with religious messages on them at their desk. In a case where an employee had a Bible and plaques containing the serenity prayer, the Lord's Prayer, and one that said, "God be in my life and in my commitment" in his office, the government employer violated the First Amendment when it demanded that these items be removed because they might be considered "offensive to employees." [48] The fact that other employees may find these items offensive is irrelevant when considered in light of First Amendment freedoms [49].

Q: As A Government Employee, Can I Advertise Events At My Church On The Bulletin Board At Work?

A: If a government employer allows employees to post non-work related material around the office, they cannot prohibit the posting of religious material. "[I]t is not reasonable to allow employees to post materials around the office on all sorts of objects, and forbid only the posting of religious information and materials." [50] Religious speech is given the same expansive protections offered to secular speech inviting "employees to motorcycle rallies, swap meets, x-rated movies, beer busts, or burlesque shows." Allowing this speech while prohibiting advertising for religious events "is unreasonable not only because it bans a vast amount of material without legitimate justification but also because its sole target is religious speech." [51].

Q: Doesn't Religious Speech By Government Employees Violate The "Separation Between Church And State?"

A: The oft cited phrase "separation between church and state" is found nowhere in the Constitution. This phrase has been misused by many in this country to mislead people and trick them into believing that the government can have absolutely nothing to do with religion. The truth is that the Constitution only prohibits the establishment of religion through the Establishment Clause of the First Amendment.

The Establishment Clause of the First Amendment does not provide the government with any justification for prohibiting religious expression in the workplace [52]. As the United States Supreme Court said in this regard: "The Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities." [53]

We emphasize, too, that fear alone, even fear of discrimination or other illegal activity, is not enough to justify such a mobilization of governmental force against [an employee] A phobia of religion, for instance, no matter how real subjectively, will not do. As Justice Brandeis has said . . . "Men feared witches and burnt women." [54].

In August of 1997, President Clinton took the remarkable step of issuing guidelines confirming that federal workers can express their faith on the job. These guidelines direct federal agencies to "permit personal religious expression by federal employees to the greatest extent possible..." [55] The guidelines are instructive for all government employees and employers and are reproduced in full in Appendix Two, beginning on page 31.

In sum, governmental employers may restrict religious activity in the workplace only if it prohibits the government from running an efficient workplace, or there is clear evidence that it is intimidating or harassing to co-workers. Speculative fears of offense or employee discontent do not provide the government with an excuse for discriminating against religious employees who express their faith through words, actions, or symbols.

The contents of this website do not constitute legal advice. If you are seeking legal advice, you will need to contact an attorney in regard to your legal matter.