

Office of the General Counsel

Freedom of Speech & Expression: *Public Employee v. Private Citizen.*

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EMPLOYEE SPEECH

While the First Amendment of the U.S. Constitution affords citizens the right to freedom of speech and expression without undue interference from government, the right is not without limitations. As public employees, the right to free expression must be balanced with the university's interest in the effective and efficient performance of public services through its employees.

Reasonable Restrictions Allowed.

The University may impose reasonable viewpoint and content neutral **Time, Place, and Manner** restrictions on speech and expressive activities to ensure the health, safety, and welfare of students, employees, and visitors, and to prevent disruption of university operations. For example, the university prohibits the disruption of events (the "heckler's veto") and imposes rules around use of amplified sound on the Pentacrest.

In addition, the specific facts and context of employee expression may result in a loss of First Amendment protection. For example, employee speech may not be protected when:

- Violating university policies, such as those on harassment or employee political activity.
- Performing work duties or functions.
- Speaking on behalf of the university to students, parents, or visitors (in tours, trainings, etc.).
- Posting or commenting on university websites or social media channels.
- Blurring the lines between personal and employee speech on personal social media accounts.

First Amendment Balancing Test for Public Employees:

1. Is the Speech Private or Official?

Generally, speech in the course of performing job duties is considered "official" and likely not protected by the First Amendment. Considerations include the use of university resources (e.g., uiowa.edu email addresses), identification as a university employee, and any connection between the subject matter of the speech and the employee's role at the university.

Employees should clarify when they are speaking privately in their personal capacity. Some university roles have such broad and/or public-facing scope that a valid disclaimer is difficult to accomplish.

2. Is the Speech on a Matter of Public Concern?

A matter of public concern is more than a personal grievance, must be outside of regular employment duties, and be of legitimate news/public interest.

3. Is the Speech Disruptive to the Workplace?

The university may not take adverse action against an employee who is speaking on a matter of public concern unless the university reasonably determines the employee's speech substantially interferes with the institution's official responsibilities. Even then, there may be legal and policy considerations other than the First Amendment.

4. Additional Academic Freedom Consideration for Faculty.

University faculty members may be protected from adverse employment action under the principle of academic freedom. More specifically, faculty speech and expression are generally protected insofar as the faculty member is engaging in:

- Classroom discussion of matters germane to the course subject matter (but not unrelated controversial topics).
- Research and creative endeavors, and disseminating results through presentation, performance, and publication.
- Peer review of faculty for academic rank and title.

Academic freedom does not protect faculty members from repercussions for violating the law, university policy or professional ethics, or infringing on the rights of individuals.

Other Laws & Policies Impact Speech.

Laws and policies other than the First Amendment impact potential consequences for individual and employee speech and expressive activities including but not limited to:

- Trademark/Brand (Policy Manual, § II-20)
- Copyright (Policy Manual, § V-30.4)
- Defamation (Iowa Code, § 659)
- Privacy (e.g., FERPA, HIPAA)
- UI Anti-retaliation Policy (Policy Manual, § II-11)
- Professional Ethics (e.g., Policy Manual, §§ III-15, III-16)
- Iowa Whistleblower Act (Iowa Code, § 70A.28)

Political Speech.

Iowa Board of Regents policy (3.10.E), states "Regent universities shall not be or become an instrument of partisan political action. The expression of partisan political opinions and viewpoints shall be those of individuals, not of institutions." As a result, the University of Iowa generally takes no political position nor engages in partisan political action.

Hate Speech.

There is no legal definition of "hate speech" under federal or Iowa state law. Similarly, there is no legal definition of evil ideas, rudeness, unpatriotic speech, or any other kind of speech that people may condemn or find offensive. "Hate speech" generally is considered to be language intended to vilify, humiliate, or incite hatred against a group or class of persons on the basis of a protected class. In the United States, hate speech is protected by the First Amendment unless it rises to the level of directly inciting imminent illegal activity or harassment as defined by law and university policy.

IOWA

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Thank you

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