

**Employee Free  
Speech**

College district employees do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

However, neither an employee nor anyone else has an absolute constitutional right to use all parts of a school building or its immediate environs for unlimited expressive purposes. When a public employee makes statements pursuant to his or her official duties, the employee is not speaking as a citizen for First Amendment purposes, and the Constitution does not insulate the communications from employer discipline.

*Garcetti v. Ceballos*, 547 U.S. 410 (2006); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) [See also GD]

**Whistleblower  
Protection**

A state or local governmental entity, including a college district, may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who in good faith reports a violation of law by the employing governmental entity or another public employee to an appropriate law enforcement authority.

A report is made to an appropriate law enforcement authority if the authority is a part of a state or local governmental entity or the federal government that the employee in good faith believes is authorized to:

1. Regulate under or enforce the law alleged to be violated in the report; or
2. Investigate or prosecute a violation of criminal law.

*Gov't Code 554.002*

A supervisor who in violation of Government Code Chapter 554 suspends or terminates the employment of a public employee or takes an adverse personnel action against the employee is liable for a civil penalty not to exceed \$15,000. *Gov't Code 554.008*

Definitions

“Public employee” means an employee or appointed officer other than an independent contractor who is paid to perform services for a state or local governmental entity. *Gov't Code 554.001(4)*

“Law” means a state or federal statute, an ordinance of a local governmental entity, or a rule adopted under a statute or ordinance. *Gov't Code 554.001(1)*

A “good faith belief that a violation of the law occurred” means that:

1. The employee believed that the conduct reported was a violation of law; and

2. The employee's belief was reasonable in light of the employee's training and experience.

*Wichita County v. Hart, 917 S.W.2d 779 (Tex. 1996)*

A "good faith belief that an entity is an appropriate law enforcement authority" means:

1. The employee believed the governmental entity was authorized to:
  - a. Regulate under or enforce the law alleged to be violated in the report, or
  - b. Investigate or prosecute a violation of criminal law; and
2. The employee's belief was reasonable in light of the employee's training and experience.

*Tex. Dept. of Trans. v. Needham, 82 S.W.3d 314 (Tex. 2002)*

### **Whistleblower Complaints**

A public employee whose employment is suspended or terminated or who is subjected to an adverse personnel action in violation of Government Code 554.002 is entitled to sue for injunctive relief, actual damages, court costs, and reasonable attorney fees, as well as other relief specified in Government Code 554.003. A public employee whose employment is suspended or terminated in violation of Government Code Chapter 554 is entitled to reinstatement to the employee's former position or an equivalent position, compensation for wages lost during the period of suspension or termination, and reinstatement of fringe benefits and seniority rights lost because of the suspension or termination. *Gov't Code 554.003*

#### Initiate Grievance

A public employee must initiate action under the grievance or appeal procedures of the employing state or local governmental entity relating to suspension or termination of employment or adverse personnel action before suing under Chapter 554.

The employee must invoke the applicable grievance or appeal procedures not later than the 90th day after the date on which the alleged violation of Chapter 554 occurred or was discovered by the employee through reasonable diligence.

*Gov't Code 554.006(a)–(b)*

#### Legal Action

If a final decision is not rendered before the 61st day after the date procedures are initiated under Government Code 554.006(a), the employee may elect to:

1. Exhaust the applicable procedures, in which event the employee must sue not later than the 30th day after the date

those procedures are exhausted to obtain relief under Government Code Chapter 554; or

2. Terminate procedures, in which event the employee must sue within time remaining under Government Code 554.005 to obtain relief under Government Code Chapter 554.

*Gov't Code 554.006(c)-(d)*

*Burden of Proof* A public employee who sues under Chapter 554 has the burden of proof, except that if the suspension or termination of, or adverse personnel action against, a public employee occurs not later than the 90th day after the date on which the employee reports a violation of law, the suspension, termination, or adverse personnel action is presumed, subject to rebuttal, to be because the employee made the report. *Gov't Code 554.004(a)*

*Affirmative Defense* It is an affirmative defense to a suit under Chapter 554 that the employing state or local governmental entity would have taken the action against the employee that forms the basis of the suit based solely on information, observation, or evidence that is not related to the fact that the employee made a report protected under Chapter 554 of a violation of law. *Gov't Code 554.004(b)*

*Notice of Rights* A state or local governmental entity shall inform its employees of their rights under Chapter 554 by posting a sign in a prominent location in the workplace. The attorney general shall prescribe the design and content of the sign. *Gov't Code 554.009*

**Right to Express Breast Milk**  
*Discrimination Prohibited* An employee of a public employer, including a college district employee, is entitled to express breast milk at the employee's workplace. A public employer may not suspend or terminate the employment of, or otherwise discriminate against, an employee because the employee has asserted the employee's rights under Government Code Chapter 619. *Gov't Code 619.002, .005*

*Policy* A public employer shall develop a written policy on the expression of breast milk by employees under Government Code Chapter 619. The policy developed must state that the public employer shall:

1. Support the practice of expressing breast milk; and
2. Make reasonable accommodations for the needs of employees who express breast milk.

*Gov't Code 619.003*

*Employer Responsibilities* A public employer shall:

1. Provide a reasonable amount of break time for an employee to express breast milk each time the employee has need to express the milk; and
2. Provide a place, other than a multiple user bathroom, that is shielded from view and free from intrusion from other employees and the public where the employee can express breast milk.

*Gov't Code 619.004*

**Breaks for Nursing Mothers**

An employer shall provide a nonexempt employee a reasonable break to express breast milk, each time the employee needs to express breast milk for her nursing child, for one year after the child's birth. An employer shall provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

An employer is not required to compensate the employee receiving reasonable break time for any work time spent for such purpose.

An employer that employs fewer than 50 employees is not subject to these requirements if the requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

*29 U.S.C. 207(r)*

**Stem Cell Treatments**

A governmental entity, including a college district, or an officer, employee, or agent of a governmental entity may not interfere with an eligible patient's access to or use of a stem cell treatment authorized under Health and Safety Code Chapter 1003, Subchapter B.  
*Gov't Code 1003.058*

**Prohibitions**

A state officer or employee, including a college district employee, may not use official authority or influence or permit the use of a program administered by the state agency of which the person is an officer or employee to interfere with or affect the result of an election or nomination of a candidate or to achieve any other political purpose. A state employee may not coerce, attempt to coerce, command, restrict, attempt to restrict, or prevent the payment, loan, or contribution of anything of value to a person or political organization for a political purpose. *Gov't Code 556.004(c)-(d)*

**Notice by Electronic Media**

If a state law requires an institution of higher education, including a college district, to provide written notification to its officers or employees of any requirement, right, duty, or responsibility provided by state law, the institution may provide the notification by use of electronic media.

An institution of higher education may adopt rules and guidelines to ensure that notification provided by electronic media is effective and that any required notification is provided to officers and employees who do not have access to electronic media.

*Education Code 51.965*

**Protection of Nurses**

A person, including a college district, may not suspend, terminate, or otherwise discipline, discriminate against, or retaliate against a nurse who refuses to engage in an act or omission as provided by Occupations Code 301.352(a-1) or a person who advises a nurse of the nurse's rights under Occupations Code 301.352. *Occupations Code 301.352(a)*

A nurse may refuse to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the Board of Nurse Examiners under Occupations Code Chapter 301, Subchapter I; that constitutes a minor incident, as defined at Occupations Code Section 301.419; or that violates Occupations Code Chapter 301 or a rule of the Board of Nurse Examiners if the nurse notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes grounds for reporting the nurse to the Board of Nurse Examiners or is a violation of Occupations Code Chapter 301 or a rule of the Board of Nurse Examiners. *Occupations Code 301.352(a-1)*

**Immunity for Shelter Workers**

A service member of the Texas military forces ordered into service of this state by proper authority is not personally liable in the person's private capacity for any act performed or for any contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration, management, or conduct of the department in business, programs, or other related affairs, under the limited waiver of governmental immunity provided by the Texas Tort Claims Act (Civil Practice and Remedies Code Chapter 101). *Gov't Code 437.222*

An officer or employee of a state or local agency, including a college district, is considered for purposes of Government Code 437.222 to be a member of the Texas military forces ordered into active service of the state by proper authority and is considered to be discharging a duty in that capacity if the person is performing an activity related to sheltering or housing individuals in connection with the evacuation of an area stricken or threatened by disaster. *Gov't Code 418.006*

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**Note:** For information regarding when the carry of weapons is permitted on campus, see CHF.

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