
**Employee Free
Speech**

An employee has a right to free speech but does not have an absolute constitutional right to use all parts of a 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)

**Federal Prohibition
on Retaliation**

Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any federal offense, shall be fined under Title 18, United States Code, or imprisoned not more than ten years, or both. *18 U.S.C. 1513(e)*

**Whistleblower
Protection**

The board or its agents shall not suspend or terminate the employment of, or take other adverse personnel action against, an employee who in good faith reports a violation of law by the ESC or another public employee to an appropriate law enforcement authority. *Gov't Code 554.002*

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 suspends or terminates the employment of or takes an adverse personnel action against an employee for reporting a violation of law shall be subject to civil penalties. *Gov't Code 554.008*

Definitions

"Employee" means an employee or appointed officer who is paid to perform services for an ESC. It does not include independent contractors. *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 a law enforcement authority is an appropriate one 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. Dep't. of Trans. v. Needham, 82 S.W.3d 314 (Tex. 2002)

Whistleblower Complaints

An employee who alleges a violation of whistleblower protection may sue an ESC for injunctive relief, actual damages, court costs, and attorneys fees, as well as other relief specified in Government Code 554.003. *Gov't Code 554.003*

Initiate Grievance

Before suing, an employee must initiate actions under an ESC's grievance policy or any other applicable policies concerning suspension or termination of employment or adverse personnel action.

The employee must invoke an ESC's grievance procedure not later than the 90th day after the date on which the alleged suspension, termination, or other adverse employment action occurred or was discovered by the employee through reasonable diligence.

Legal Action

If the board does not render a final decision before the 61st day after grievance procedures are initiated, the employee may elect to:

1. Exhaust an ESC's grievance procedures, in which case 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 ESC grievance procedures and sue within the time lines established by Government Code 554.004 and 554.006.

Gov't Code 554.004, 554.006 [See DGBA regarding grievance procedures]

Burden of Proof	If the employee brings a lawsuit, the employee has the burden of proof unless the suspension, termination, or adverse personnel action occurred within 90 days after the employee reported a violation of law, in which case the suspension, termination, or adverse personnel action is presumed, subject to rebuttal, to be because the employee made the report.
Affirmative Defense	<p>It is an affirmative defense to a whistleblower suit that the ESC 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 the whistleblower law.</p> <p><i>Gov't Code 554.004</i></p>
Notice of Rights	The board shall inform its employees of their rights regarding whistleblower protection by posting a sign in a prominent location in the workplace. The design and content of the sign shall be as prescribed by the attorney general. <i>Gov't Code 554.009</i>
Immunity from Liability	<p>A professional employee is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion, except in circumstances where, in disciplining a student, the employee uses excessive force or his or her negligence results in bodily injury to the student. "Professional employee" includes a superintendent, principal, teacher, supervisor, social worker, counselor, nurse, teacher's aide, a student in an education preparation program participating in a field experience or internship, a DPS-certified school bus driver, and any other person whose employment requires certification and the exercise of discretion.</p>
<i>Motor Vehicle Exception</i>	<p>Education Code 22.0511 does not apply to the operation, use, or maintenance of any motor vehicle.</p> <p><i>Education Code 8.006, 22.0511(a)–(b), 22.051; <u>Hopkins v. Spring Indep. Sch. Dist</u>, 736 S.W.2d 617 (Tex. 1987); <u>Barr v. Bernhard</u>, 562 S.W.2d 844 (Tex. 1978); <u>Davis v. Educ. Svc. Ctr. Region VIII</u>, 62 S.W.3d 890 (Tex. App.—Texarkana 2001)</i></p>
Protection for Reporting Child Abuse	<p>The board or its agents may not suspend or terminate the employment of, or otherwise discriminate against, a professional employee who in good faith:</p> <ol style="list-style-type: none">1. Reports child abuse or neglect to:<ol style="list-style-type: none">a. The person's supervisor,b. An administrator of the facility where the person is employed,

- c. A state regulatory agency, or
 - d. A law enforcement agency; or
2. Initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of child abuse or neglect.

A person whose employment is suspended or terminated or who is otherwise discriminated against in violation of the foregoing may sue for injunctive relief, damages, or both. The ESC employee who has a cause of action under Whistleblower Protection may not bring an action under Protection for Reporting Child Abuse.

Family Code 261.110

Breaks for Nursing Mothers

Nonexempt
Employees

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

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

29 U.S.C. 207(r)

Right to Express Breast Milk

An ESC employee is entitled to express breast milk at the employee's workplace.

The ESC shall develop a written policy on the expression of breast milk by employees under Government Code Chapter 619. The policy must state that the ESC shall support the practice of expressing breast milk and make reasonable accommodations for the needs of employees who express breast milk.

An ESC shall provide a reasonable amount of break time for an employee to express breast milk each time the employee has need to express the milk. The ESC shall 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.

An ESC 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. Government Code Chapter 619 does not create a private or state cause of action against an ESC.

Gov't Code 619.002-.006

**Immunity for Shelter
Workers**

An officer or employee of an ESC is not civilly liable for an act performed in the discharge of duty 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, 431.085*