

Gov't employees enjoy free speech protection

Government employees have more protection from termination than most private-sector workers do. *Example:* They have the right to comment on matters of public concern without being discharged for doing so.

Social media policies for public employers must take this into account. A recent Pennsylvania Commonwealth Court decision highlights how comments on platforms like Facebook may appear to violate reasonable social media policies. However, they are free speech protected by the First Amendment.

Recent case: Rachel, a roadway programs technician, worked for the Pennsylvania Department of Transportation until she was fired for violating its social media policy.

She belonged to a Facebook group, "Creeps of Peeps," where she posted a comment that read, in part, "...can we acknowledge the horrible school bus drivers? Daily I get ran off the berm of our completely wide enough road I end this rant by saying I don't give a flying **** about those babies and I will gladly smash into a school bus." Her post generated critical comments, and someone took a screen shot and forwarded it to her employer.

Rachel was then called into a disciplinary hearing and terminated for violating the social media policy by portraying the agency in a bad light, among other claims.

She sued, alleging that her comments were really a matter of public concern and that she was merely commenting on the hazards of poor driving by school bus drivers.

The Pennsylvania Common-wealth Court examined examples of the exercise of First Amendment rights by public employees. It concluded that Rachel was within her rights because she was commenting on a matter of public concern: safe school bus transportation. It ordered her reinstatement. (*Carr v. Commonwealth of Pennsylvania*, Commonwealth Court, 2018)