

## FIREFIGHTERS AND SOCIAL MEDIA: DOES THE FIRST AMENDMENT PROTECT YOU?

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*Editor's Note: This article is part of a [series of articles](#) in which [Curt Varone](#) will address questions on important fire service legal issues. If you would like to submit a question, please email Shannon Pieper at [spieper@lexipol.com](mailto:spieper@lexipol.com).*

### **Can I get into trouble at work for messages I post on social media when I'm not on-duty? My profile pic is not in uniform and I don't identify myself as a firefighter.**

The short answer is yes, under certain circumstances you can be disciplined for your social media activities whether on-duty or off-duty. Understanding when you can and cannot be disciplined requires an understanding of two important topics: (1) the First Amendment and (2) for departments that are subject to collective bargaining, the right of employees to engage in concerted activities.

Both topics are quite complicated and beyond the scope of a simple explanation. However, here are three tips I can offer:

**1. Make sure you post as a private citizen.** The First Amendment only provides protection to public employees when they post as private citizens. Identifying yourself as a firefighter through photos, statements, and even discussing incidents *can* cause you to be perceived as a spokesperson for your organization. Your intent is irrelevant. The focus is on how others may view you based upon all the facts and circumstances. There are few absolutes and the inquiry in each case will be highly fact-specific. Things like whether your profile photo shows you in uniform and whether you identify yourself as a member of your department will be factors but no one factor will be determinative. The best advice is to make sure you post in such a way that you will be clearly viewed as speaking as a private citizen.

**2. Do not post about matters that are in the nature of petty or personal grievances.** The First Amendment offers no protection when airing petty or personal grievances in social media. The First Amendment only protects public employees when they are discussing matters of public concern. The distinction between matters of public concern and petty or personal grievances is another difficult area where there are few absolutes and the inquiry will be highly fact-specific.

In a collective bargaining environment, it may be possible that some *work-related discussions* among co-workers that are not of a public concern may be entitled to some protection through collective bargaining laws. The protection offered by collective bargaining laws is relatively limited. For example, the posts must be work-related and the discussion must be in the context of "concerted activities" among co-workers for their mutual protection. In addition, disparaging customers and being disloyal to the brand are not protected under the [National Labor Relations](#)

[Act](#) (NLRA) in the private sector. It is hard to apply some of the private-sector NLRA concepts to the public sector—but don't allow yourself to be the test case. The best bet is to avoid disparaging members of the public and the services that your organization provides, and—above all—avoid airing petty or personal workplace grievances in social media.

**3. Do not engage in speech that may cause actual harm or disruption to the mission and function of your department.** There is no First Amendment protection when firefighters engage in speech that causes actual harm or disruption to the mission and function of their fire department. Examples include speech that causes the public to question your willingness to provide a service to all members of the community, and hence lessen their confidence in the services your department provides. Making threats to harm or withhold services from certain individuals or groups, or encouraging others to cause harm or withhold services from certain individuals or groups, are likely to be categorized as causing actual harm or disruption to the mission and function of the department. If you post in such a way as to cause actual harm or disruption to your organization—no matter how sincerely you believe in what you are saying—you risk losing protection under the First Amendment.



**Curt Varone** has over 40 years of fire service experience and 30 as a practicing attorney licensed in both Rhode Island and Maine. His background includes 29 years as a career firefighter in Providence (retiring as a Deputy Assistant Chief), as well as volunteer and paid on call experience. He is the author of two books: *Legal Considerations for Fire and Emergency Services*, (2006, 2nd ed. 2011, 3rd ed. 2014) and *Fire Officer's Legal Handbook*(2007), and is a contributing editor for *Firehouse Magazine* writing the Fire Law column.