



Off-Duty Facebook Post Grounds For Termination Of Public Employee, Pennsylvania Supreme Court Rules

Insights

5.29.20

(Public) employers rejoice! In a unanimous decision, the Pennsylvania Supreme Court just ruled that PennDOT did not violate an ex-employee's free speech rights by firing her over a Facebook rant in which the ex-employee said she "don't give a flying s*** about those babies and [] will gladly smash into a school bus." This case should serve as a beacon for Pennsylvania public employers navigating the often-murky waters of employee social media use.

The Employee Said What?

PennDOT hired Rachel Carr as a seasonal/non-permanent employee. She was eventually promoted to Roadway Programs Technician, and became subject to a 180-day probationary period. Shortly after, while off-duty and at home, Carr posted a self-described "rant" through her personal Facebook account to a closed Facebook group called "Creeps of Peeps":

Rant: can we acknowledge the horrible school bus drivers? I'm in PA almost on the NY boarder [sic] bear [sic] Erie and they are hella scary. Daily I get ran [sic] off the berm of our completely wide enough road and today one asked me to tbone it. I end this rant saying I don't give a flying s*** about those babies and I will gladly smash into a school bus[.]

But that wasn't all... Carr also posted several comments in reply to some of the commentary on her post, including:

Your children and your decision to chance them with a driver you've never been a passenger with is your problem. A vehicle pulls out in front of me or crosses the yellow line, that's their problem. A sedan, school bus or water truck. You're [sic] kids your problem. Not mine [.]

Although Carr posted these on her personal Facebook page, she identified herself as a PennDOT employee on her public profile. Following these posts, three members of the Creeps of Peeps Facebook group forwarded complaints to PennDOT's Facebook page asking PennDOT to take responsive action.

After making their way to PennDOT's human resources office, PennDOT scheduled a pre-disciplinary conference and, following the conference, placed Carr on suspension pending further investigation. Ultimately, PennDOT terminated Carr's employment.

Carr appealed to the Pennsylvania State Civil Service Commission (Commission) pursuant to the Civil Service Act, alleging PennDOT violated the Act by terminating her employment for her exercise of her right to free speech. When the Commission affirmed PennDOT's termination of her employment, Carr filed an appeal to the Pennsylvania Commonwealth Court. A unanimous three-judge panel of the Commonwealth Court reversed the Commission's findings and determined that the Commission erred in finding that (1) Carr's Facebook post did not involve a matter of public concern and (2) PennDOT's generalized interest in the safety of the traveling public does not outweigh Carr's specific interest in commenting on the safety of a particular bus driver. PennDOT then sought an appeal.

What Did PA's High Court Rule?

In a win for public employers, the Pennsylvania Supreme Court reversed. At a general level, the court concluded that Carr's Facebook post and subsequent comments, though created off-duty, could be grounds for firing even if the statement is deemed a matter of public concern. In reaching this conclusion, the Court made the following notable points:

- **Courts must assess the importance, or lack thereof, of the speech involved.** According to the court, it is not enough to merely determine that Carr raised an issue of public concern. Whether a public employee raises an issue of public concern is threshold matter. If the public employee raises such a concern, the importance of the concern, or lack thereof, must be weighed against the following factors as set forth in *Sacks v. Dep't of Pub. Welfare*, 465 A.2d 981 (Pa. 1983): (1) Whether, because of the speech, the government agency is prevented from efficiently carrying out its responsibilities; (2) Whether the speech impairs the employee's ability to carry out his own responsibilities; (3) Whether the speech interferes with essential and close working relationships; and (4) The manner, time and place in which the speech occurs. Balancing the foregoing factors against the importance of the public concern at issue, the court concluded that Carr's posts had limited public importance while, on the other hand, they had a detrimental effect on PennDOT.
- **Carr's speech could reasonably be said to adversely affect PennDOT's interest as an employer.** To quote the court, "Even if Carr never intended to drive her vehicle into a school bus, if her words alone could erode the public's trust in her employer's mission, PennDOT acted reasonably in terminating her employment Clearly, few statements could be more contrary to the PennDOT's mission of providing safe roadways for the traveling public than Carr's comment, "I don't give a flying s*** about those babies and I will gladly smash into a school bus.'" This was sufficient to establish that the statements could prevent PennDOT from efficiently carrying out its responsibilities.

What Does This Mean for Employers?

For public employers in Pennsylvania, this decision is critical. Depending on the nature of the employee speech in question, and the adverse impact it may have on the mission of the public employer, public employers now have more solid grounds to proceed with termination.

Private employers may too take note of this decision. In an era of budding technology and the gray area that is “off-duty versus on-duty conduct,” this decision may serve as a much-needed springboard.

In any situation involving off-duty comments made on personal social media channels, you should continue to proceed methodically and cautiously. Should you be confronted with social media posts that may run afoul of your mission, you should, as an initial matter, (1) carefully consider the source; (2) analyze the speech involved; and (3) identify the potential harms. From there, you should involve your employment counsel to determine best next steps.

If you have any questions about this area of the law, or how this case may affect your business, please contact any member of [our Pennsylvania offices](#) or your Fisher Phillips attorney.

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