MIIA Risk Management Training

Employment Practices

Free Speech at Work: The First Amendment for Public Employers

A public employee is two people at once. On the clock, they speak for the government. Off the clock, they are citizens with the same constitutional rights as anyone else.

The hard cases live in the space between.
This program walks supervisors, department heads, and HR professionals through the test courts actually use to decide when an employer can act on what an employee says, and when it cannot. We will work through the leading Supreme Court decisions, recent cases from around the country, and the social media posts that drive most of today's disputes.

You will leave with a practical framework for the next hard call and a clear way to review your own policies.

Module 1: The First Amendment at Work

Key Focus: What the First Amendment protects, and why it works differently when the government is the employer.

Learning Objectives:

- Identify the core protections of the First Amendment.
- Explain why public employees have constitutional speech protections that private-sector employees do not.

Module 2: The Public Employee Speech Framework

Key Focus: The three-step analysis built by *Pickering*, *Connick*, and *Garcetti*.

Learning Objectives:

- Determine whether an employee spoke as a private citizen or as part of their official duties (*Garcetti v. Ceballos*; *Lane v. Franks*).
- Decide whether the speech addressed a matter of public concern (*Connick v. Myers*).
- Weigh the employee's interest in speaking against the employer's interest in an effective, functioning workplace (*Pickering v. Board of Education*).

Module 3: Case Studies

Key Focus: How courts have applied the framework to real employees and real discipline.

Learning Objectives:

- Examine recent decisions, including *Kennedy v. Bremerton School District* (2022) and *Hedgepeth v. Britton*, the Seventh Circuit decision the Supreme Court declined to review in May 2026.
- Identify the facts that tend to decide these cases: what was said, where, to whom, and what disruption actually followed.

Module 4: Social Media

DATE

Wednesday
January 6, 2027
9:00 AM- 11:30 AM

LOCATION

Virtual

REGISTER

Here



PRESENTER

Eric Atstupenas is General Counsel to the Massachusetts Chiefs of Police Association and the founder of BrightRaven Strategies, LLC. He is licensed to practice law in Massachusetts, Rhode Island, and Connecticut.

Eric grew up in a law enforcement family. Most advisors explain the law. He helps public-sector leaders use it.

He is the past chair of the IACP Legal Officers Section and serves on the IACP Committee on Human and Civil Rights. He sits on the Board of Directors of the Municipal Police Institute, a Massachusetts nonprofit that trains law enforcement, and is an associate member of the Central Massachusetts Chiefs of Police Association. He has served as an editorial advisor for, and contributor to, the IACP's *Police Chief* magazine.

Eric is the author of *Taking Command* and the forthcoming *Stability Is Engineered*. He has trained public-sector leaders and spoken at conferences across the country, and works with Eric Daigle, Esq., of Daigle Law Group,

Key Focus: Applying the framework to posts, comments, shares, and official accounts.

Learning Objectives:

- Analyze off-duty posts under the *Pickering* balancing test.
- Understand when a public official's social media account becomes government action, and what that means for blocking users or deleting comments (*Lindke v. Freed*, 2024).

Module 5: Policy and Practice

Key Focus: Writing and enforcing speech and social media policies that hold up in court.

Learning Objectives:

- Recognize policy language that courts have found overbroad or vague.
- Draft policies that protect legitimate workplace interests without chilling protected speech.
- Build the record before discipline: what to document, and why it matters later.

Module 6: Putting It to Work

Key Focus: Tools for the next hard call.

Discussion Points:

- A step-by-step checklist for evaluating employee speech before taking action.
- Open questions from participants.

LLC, as a law enforcement consultant and trainer.

MIIA Risk Management

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