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# Must An Employer Tolerate Truly Obnoxious Employee Speech That Is Not Job-Related?

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There is a tenured professor at Florida Atlantic University School of Communications and Multi-Media Studies who has gained notoriety because of his public statements, including a blog, which claim that virtually every mass shooting or terror attack – including 9/11 and the recent shooting in San Bernardino, California - is a fake. In particular, he has claimed that the tragedy at Sandy Hook Elementary School was staged, and has used names and photographs of the victims in his publications. The parents of one of the Sandy Hook victims have recently charged him with harassment for, among other things, questioning their son's death certificate.

The professor was reprimanded by Florida Atlantic University in 2013 because he failed to make clear on his blog that his views were not endorsed by his employer. According to an article in the Huffington Post, the university has now started proceedings to revoke his tenure and fire him, and he has said he will rely on a free speech defense.

You might think that any employer would have the right to dissociate itself from an employee whose published statements are so shameful and repugnant. But a Connecticut employer finding itself in this situation would have to pause to consider the effect of Connecticut's employee free speech statute, Connecticut General Statutes Section 31-51q. The statute protects an employee from employment discipline based on the exercise of First Amendment rights. This has been held to mean that an employee may not be disciplined or discharged for public statements that are not made in the performance of his or her official employment duties, unless the employee's activity "substantially or materially interferes with the employee's bona fide job performance or the working relationship between the employee and the employer."

Section 31-51q was intended to protect employees from retaliation by their employers for expressing views on public matters with which the employer may differ. An employer such as the university very well might be able to demonstrate that just being associated with the professor's level of extremism is damaging to its reputation, and discourages prospective students and faculty from applying. But because of Section 31-51q, a Connecticut employer – including a public university – could not simply rely on the outrageous nature of the professor's statements, but would have to show that the his work performance, or the working relationship between him and his employer, was substantially harmed. Such is the price of free speech.

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