



WHELAN, CORRENTE,  
FLANDERS, KINDER  
& SIKET LLP

*Meghan E. Siket*  
msiket@whelancorrente.com  
401.270.3136

*VIA FIRST CLASS MAIL*

January 31, 2018

Steven Brown  
Executive Director  
ACLU  
128 Dorrance Street, Suite 400  
Providence, RI 02903

Re: Town of East Greenwich Employee Social Media Policy

Dear Mr. Brown,

Our firm represents the Town of East Greenwich in labor and employment matters. This letter is on behalf of the Town of East Greenwich, in response to your letter to Town Council President Cienki dated January 29, 2018 in which the ACLU raises First Amendment concerns with the Town's Employee Social Media Policy (the "Policy").

We can agree that the First Amendment protects a public employee's right, in certain circumstances, to speak as a citizen addressing matters of public concern. The Town disagrees, however, that the Policy illegally impacts public employees' First Amendment Rights. The concerns raised by the ACLU with the Policy are unfounded, and appear to be based on a disjointed reading of isolated phrases, taken out of context.

The First Amendment does not shield from discipline the expressions of employees made pursuant to their official duties, or in violation of other federal or state laws. The Town has a legal obligation to regulate speech in violation of anti-discrimination and anti-harassment laws, such as Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and equivalent Rhode Island employment laws.

You raise an issue with the language "including during non-work hours" in Subsection (a) of the Policy. However, the Town does have the right to regulate an employee's social media use, regardless of when that use occurs (i.e., including during non-work hours) if that use is in violation of the Town's other policies. Subsection (a) specifically references the Town's anti-harassment policy. If an employee uses social media, during non-work hours, to illegally harass a colleague based on their sex or race, for example, Title VII may obligate the Town to take corrective action, including disciplining that employee. The First Amendment does not protect any public employee from the dictates of Title VII, or any other anti-harassment or anti-

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discrimination law. Your narrow reading of “including during non-work hours” ignores the rest of Subsection (a).

You also raise an issue with the language in Subsection (e). Again, if you look at the context of Subsection (e), it is clear that the Town is referring to an employee’s obligations to comply with the Town’s other policies and procedures. You offer an example of an employee “privately retweeting ... some of President Trump’s less tolerant comments” which you are concerned could find them in violation of the Policy. Subsection (e) cautions employees not to post speech against any individuals due to their membership in a protected category. This is a reference to compliance with laws governing anti-discrimination and anti-harassment in employment. If an employee were to harass a colleague online based on their national origin, for example, using President Trump’s less tolerant comments, the Town absolutely would have a legal obligation to address that conduct.

You also raise an issue with the disclaimer regarding the opinions of public employees in Subsection (b) of the Policy. This Subsection clearly states that it applies to posts “in the name of the Town or in a manner that could reasonably be attributed to the Town.” In order for your concerns to be valid, you would have to read that language out of the Policy. The Town is not requiring a disclaimer on posts that are not “in the name of the Town or in a manner that could reasonably be attributed to the Town.”

I would note that your allegations that the Town’s officials have themselves acted “recklessly” is unnecessarily inflammatory and not constructive.

In conclusion, you appear to be looking for a solution without a problem. The Policy does not violate Town employees’ First Amendment rights. It appropriately strikes a balance between the interests of Town employees’ to speak as citizens addressing matters of public concern and the Town’s interests, as an employer, in promoting a non-discriminatory and efficient workplace.

Sincerely,

A handwritten signature in black ink, appearing to read "Meghan E. Siket". The signature is fluid and cursive.

Méghan E. Siket

cc: Suzanne McGee Cienki, President