

# [***All Hands Memo: Why Activism At Work Could Get You Fired***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BYX-D311-DXVP-501H-00000-00&context=1516831)

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**Highlight:** In April, Google fired 50 staffers after protests over its contracts with Israel. Forbes spoke with legal experts about the protections employees have and don t have when speaking out at work.

**Body**

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On April 16, Google employees staged a sit-in at the Sunnyvale, Calif. office of Google Cloud President Thomas Kurian over Project Nimbus, the company's billion-dollar cloud contract with the Israeli government.

No Tech for Apartheid Campaign

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**In April, Google fired 50 staffers after protests over its contracts with Israel. As employers worry that campus activism could spread to the workplace, Forbes spoke with legal experts about the protections employees have and don t have when it comes to speaking out at work.**

**By Jena McGregor and Maria Gracia Santillana Linares, Forbes Staff**

By**the time Emaan Haseem**received notice on April 17 that she was being fired from Google, she was ready to leave.

The 23-year-old software engineer had joined the company in 2022, straight out of theUniversity of Texas at Austin. She was excited to be going to work for a company she thought wasn t involved with military technology after encountering defense industry heavyweights, such as Palantir, at campus recruiting events. But her enthusiasm was short-lived: Shortly after signing her offer letter, Haseem learned about Project Nimbus, a$1.2 billion cloud computing contractGoogle and Amazon have with the Israeli government.

After the October 7 Hamas attacks on Israel, Haseem joined No Tech For Apartheid, an advocacy group of tech industry employees focused on ending the contract, and decided to participate in an April 16 sit-in at Google s Seattle office. (Protests also took place at its New York and Sunnyvale, Calif. offices.) I was ready to leave my job honestly, says Haseem, who reports she left the sit-in when Google security asked her to. I wanted to see if there was any way to leave [Google] more aware [about Project Nimbus] than I found it.

Haseem is one of about 50 employees who were terminated from Google; some are joining a charge filed against the search giant on April 29 with the National Labor Relations Board (NLRB). They claim they were unfairly fired over their participation in a peaceful, non-disruptive protest that was directly and explicitly connected to their terms and conditions of work, according to a copy of the charge viewed by**Forbes.**

In response to the charge, Google spokesperson Bailey Tomson said in an emailed statement that employees were disrupting and occupying work spaces, and making other employees feel threatened and unsafe. In a companyemailsent April 18, CEO Sundar Pichai said: This is a business, and not a place to act in a way that disrupts coworkers or makes them feel unsafe, to attempt to use the company as a personal platform, or to fight over disruptive issues or debate ***politics***.

The Google case is the latest to raise a host of questions about the rights U.S. workers have when it comes to activism on the job and the challenges companies could face if unrest on college campuses spreads into workplaces.For employers, a recent ruling from the NLRB may expand questions about some workers protected political speech and its connection to working conditions. And for employees, the fundamental question is this: What can I really do and say when it comes to activism at work?

This is a fraught issue, says Mark Hanna, a Washington, D.C.-based labor and employment lawyer who represents workers. There are too many ways where employers and employees are going to fall into traps by either clamping down too hard, or risking their job by being too expressive. Everybody should be careful here.

Google s case has grabbed numerous headlines, but workplace activism has been growing for years as more CEOs have taken on social and political issues whether publicly opposing bills that limit transgender rights or pledging billions to racial justice causes and as employees are increasingly encouraged, in the fashionable parlance of many managers, to bring their whole selves to work. In a highly-charged presidential election year, as workers have more tools to criticize their employer on social media and as younger generations increasingly expect workplaces to line up with their personal or political values, the environment is ripe for more activism to find its way into the office.

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Add concerns that the current pro-Palestinian protests on college campuses could spill into the workplace, and lawyers say their phones have been lighting up with employers asking for advice. Sam Schwartz-Fenwick, a labor and employment lawyer at Seyfarth Shaw in Chicago, says there s a real fear of how to respond. Employers are asking questions like: How do we lower the temperature? How do we remind people that their focus at work is to do work?

For employees who want to engage in protests at work, the legal questions are also complex but the protections are relatively limited. By and large, there are fewer protections for employees than many people think, but there are key exceptions depending on whether the employee works for the government; is in a union with a collective bargaining agreement or has another contract in place; is covered by certain state laws; or based on what issues employees are protesting.

People do not understand that you can be fired for something as arbitrary as the boss not liking the kind of socks you wear, says Cathy Creighton, director of Cornell University s Industrial and Labor Relations School sBuffalo Co-Lab. Most employees, she says, are subject to the concept of at will employment, which is presumed for employees in all states but Montana. That means unless there s a specific law or contract in place that offers workers protections and makes firing illegal and there are a number of important exceptions many workers can be fired for a good reason, a bad reason or no reason, Creighton says.

One widespread misconception, employment lawyers say, is that the notion of freedom of speech extends to private workplaces. But unless someone works for the government employees of public universities, it should be noted, are typically state employees the First Amendment does not apply. Protection for freedom of speech, says Jeff Hirsch, a law professor at the University of North Carolina-Chapel Hill and a former litigator with the National Labor Relations Board, only applies to the government. Period. Google doesn t have to follow the First Amendment. Deena Merlen, an employment and labor lawyer in Connecticut, echoes that assessment. Private employees, she says, "don't have any constitutionally protected rights under federal law to say what [they] want and not be fired for it.

There are too many ways where employers and employees are going to fall into traps by either clamping down too hard, or risking their job by being too expressive. Everybody should be careful here. <footer>Mark Hanna, Washington, D.C. labor and employment lawyer representing workers</footer>

So can workers ever speak out? Yes, but it depends on a range of specific circumstances. For instance, some individual states or local jurisdictions have protections for employees legal off-duty political activity, or from discrimination based on political affiliation. Unions also offer some protections. Employees who have a collective bargaining agreement, or a legal contract between an employer and a labor union, typically have some protections through just cause a concept that s often part of union contracts and may protect workers from retaliation or unfair firings. But only about 10% of workers are members of a labor union, according to2023 data from the Bureau of Labor Statistics, and not all members of a union have a current bargaining agreement in place.

In addition, even employees who aren t union members can still benefit from protections in the National Labor Relations Act, which gives private sector employees who are not in supervisory roles therightto seek better working conditions and protections from retaliation. To do so, they have to meet the standard of protected concerted activity, which is legal-speak that means two or more employees must be acting together for their mutual aid or protection regarding terms and conditions of employment.

That key phrase is the one lawyers say will be under scrutiny when it comes to the Google workers charge, especially after a Februarydecisionby the Biden administration s more labor-friendly National Labor Relations Board. In it, the board sided with a Home Depot employee who refused to remove the hand-drawn letters BLM (a reference to the Black Lives Matter movement) from a work apron, calling it a logical outgrowth of earlier complaints employees had made about racial discrimination in the workplace.

As a result, the NLRB concluded the employee s conduct was also for mutual aid or protection. Home Depot is appealing the decision; a spokesperson, Beth Marlowe, said in an emailed statement the company disagrees with the NLRB s decision and is fully committed to diversity and respect for all people. We do not tolerate any kind of workplace harassment or discrimination.

The decision has gotten employers attention. A lot of employers took notice of that, says Lindsay Burke, a Washington, D.C.-based employment lawyer who represents employers. The NLRB, she says, took a pretty expansive view of speech that on its face might look political, but then could just be tied back to concerns about the way the workplace is operating.

Traditionally, terms and conditions was presumed to be a straightforward concept that covered wages, benefits, working hours or safety conditions. Just saying I don't like the business my employer's engaging in is not going to cut it, says UNC s Hirsch.

But in theFebruary ruling, the NLRB appeared to make a connection between what might be unprotected workplace speech (such as wearing a Black Lives Matter button) and a history of related complaints about working conditions that might warrant protection. The case, says Risa Lieberwitz, a law professor at Cornell who is also academic director of itsWorker Institute, is a very important decision because it makes clear that employees expressions, through their communication about [related political or social issues] can be linked to labor issues within the workplace.

The ex-Google employees may attempt to argue something similar: Their charge filed with the NLRB said employees were terminated for participating in a peaceful, non-disruptive protest that was directly connected to their terms and conditions of work. Meanwhile, in a Novemberopen letter published online,the No Tech For Apartheid group alleged that managers at Google had been inappropriately using their ranks to question, report and attempt to fire employees expressing pro-Palestinian views.

In response to the open letter, Google s Tomson said in a statement that this is a highly sensitive time and topic in every company and workplace, and we have many employees who are personally affected. The overwhelming majority of those employees are not engaged in internal discussions or debate, adding many appreciated the company s focus on the safety of employees. Regarding the NLRB charge, the company said the protesting employees behavior was completely unacceptable and that Google carefully confirmed and reconfirmed that every single person whose employment was terminated was directly and definitively involved in disruption inside our buildings. We are confident in our position and stand by the actions we ve taken.

Indeed, employment lawyers say one factor that s likely to come into play in such scenarios is whether workers speaking out are violating workplace conduct policies. The number one thing that every employer must do is provide a safe working environment for their employees, says Rick Grimaldi, an employment lawyer with Fisher Phillips in Philadelphia, speaking generally rather than specifically about Google. If I'm Jewish and I'm going to work and I feel threatened because of it, then I think the employer has an obligation to take action to make sure the behavior stops.

Still, policies should be consistently applied, lawyers say. What I would caution employers to do is to be content-neutral to have policies that apply to everything, says Hanna, taking similar actions whether it's a union pin, whether it's a [button with a] Palestinian flag or a rainbow flag.

What about political speech and activities that employees engage in outside of work? Several states have explicit protections for some types of legal off-duty political activities. Even in other states, many employers don t want to fire people for what they do on their own time unless the actions are illegal, says David Kurtz, an employment litigation practice co-chair at Constangy, Brooks, Smith & Prophete who practices out of Boston. Ifthey're protesting on their own time but they re seen on social media engaging in hate speech or defacing property then [employers] would have the opportunity to take action.

The Biden NLRB has weighed in here too. An August NLRBrulingappeared to expand the protections given to employees conduct outside the workplace by setting a new standard: An employer's policies restricting off-duty activities, including speech, would need to be more narrowly tailored to serve a legitimate and substantial business interest.

For workers or students who choose to protest, there are risks for future employment, too. As it becomes easier to identify protest attendees by a mere picture one reverse Google Image picture can turn up a person s name the law doesn t offer much protection when it comes to future jobs, says Merlen, unless the employee can successfully argue they weren t hired over a protected characteristic such as their religion.

Workers seem to recognize that too. Says one former Google employee who worked on internal DEI initiatives and requested anonymity for fear of retaliation from future employers: We knew that the labor law was gray. But we decided this was a risk we were willing to take.

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