



Education | Healthcare | Public Services

## FAQ: Campus Free Speech/Academic Freedom: Protests

*Considering the new “time, place and manner” restrictions that many universities have [enacted](#) in the last year as a response to the protests and encampments prompted by the Israel-Hamas war, we have provided additional guidance supplementing our [Campus Free Speech/Academic Freedom in Politically Charged Times](#) FAQ.*

*This does not constitute legal guidance. For further guidance you should consult your local AFT affiliate, collective bargaining agreement, institutional regulations and/or faculty handbook, as well as state and federal law. You may also wish to join efforts to strengthen the language on academic freedom on your campus through joining your campus union. If you need more guidance or would like information on how to organize, please reach out to us at [highereddept@aft.org](mailto:highereddept@aft.org).*

### 1. What policies govern protest and speech on campus?

It depends on whether a university is private or public. Public institutions are bound by the First Amendment, which protects most speech and “expressive” activity—for example, picketing or wearing a pin supporting a particular cause. There are very narrow exceptions that permit censorship, including true threats of physical harm or incitement to imminent violence. Public institutions, however, may establish time, place and manner restrictions to regulate speech and activity to prevent significant disruption to the university’s educational mission (see #2 below).

Private institutions, on the other hand, are not required to uphold First Amendment protections, but as institutions committed to the public good and open debate and dialogue, their campus policies should follow free speech principles and support academic freedom. Check your institution’s policies. Private institutions that receive federal funding must also adhere to federal anti-discrimination laws, such as those applicable under Title VI and Title IX. State governments may also pass statutes requiring private institutions to uphold free speech rights. California, currently, is the only state that grants First Amendment protections *to students* at private postsecondary institutions.<sup>1</sup>

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<sup>1</sup> California state law does not extend First Amendment protections to employees of private postsecondary institutions. [California Education Code § 94367 \(Leonard Law\)](#)

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The AFT is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.

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Private institutions are required to substantially comply with the rules and procedures outlined in their policies when they investigate faculty, students or student groups for any conduct, including speech, that is alleged to have violated school rules. These rules must be applied fairly and evenhandedly.

## **2. What are time, place and manner restrictions?**

Time, place and manner restrictions are policies adopted by universities to regulate speech that is disruptive to the university's business and mission. At public institutions, the restrictions must be reasonable, viewpoint- and content-neutral, and created for the purpose of preventing significant disruption on campus (e.g., maintaining traffic flow or continuing classes), and they must provide "*ample* alternative channels [emphasis added]"<sup>2</sup> for communication.

While not bound by the strictures of the First Amendment, a private institution's time, place and manner policy should be aligned with its educational mission. Private institutions also may not enforce their time, place and manner policies in a way that runs afoul of anti-discrimination laws such as Title VII, Title VI and Title IX.

## **3. My university is limiting where community members can protest to fixed "free speech" zones. Is this legal?**

Banning otherwise lawful protest except in fixed zones can be problematic and in some cases unlawful. The Supreme Court has held that when the government restricts when, how and where you can engage in speech to prevent significant disruption, the government must provide "ample" alternative channels for the public to engage in such activity. Overly restrictive limitations on where you can engage in free speech (e.g., limiting expressive speech to one or two small areas on campus) undermine the First Amendment and private institutions' principles of free speech and academic freedom. In some cases, they may be unlawful.

## **4. My university has issued a new policy forbidding the wearing of face masks during protests and/or requiring masked protesters to immediately provide IDs to authorities if asked. Can they do this?**

Institutional anti-mask policies must be applied uniformly and evenhandedly across campus. Accommodations should be made for religious needs and health reasons.

In some states, an officer may ask you to identify yourself only if there is reasonable suspicion that you have committed a crime. You should check your state's stop-and-identify laws so that you know to what extent an officer can request identification. It is never lawful for the authorities to request identification if there is no suspicion a crime is being committed. Requesting identification of someone engaged in lawful conduct is a violation of your right to free speech.

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<sup>2</sup> *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

**5. Can the university regulate the use of signage (e.g., placement, size, etc.)?**

Yes, to an extent. Universities may place reasonable rules for signage that are enforced for the purpose of preventing significant disruption on campus and protecting campus property. For example, a rule that restricts signage from blocking entryways or from being affixed to any university buildings could serve a significant governmental interest of not blocking traffic and preventing damage to government property.

However, universities may not regulate the content of signage except when language is used that is not protected by the First Amendment (e.g., threats of physical harm, incitement, etc.).

**6. Can time, place and manner restrictions be used to limit bona fide strikes and union job actions?**

In the private sector, protesting working conditions at your place of employment is a protected activity under Section 7 of the National Labor Relations Act (the “Act”). Employers cannot adopt overbroad time, place, and manner rules that chill employees’ exercise of their rights under Section 7. Any employer rule that restricts off-duty employees from engaging in Section 7 activity (i.e. protesting working conditions by picketing) on its property is presumed a violation of the Act unless the employer can demonstrate special circumstances that make the rule necessary to maintain business or discipline.

Private sector employees also have the right to strike (refusal to work) in protest of working conditions or an unfair labor practice committed by their employer. The employer, however, can bargain a no strike clause limiting the employees’ right to strike working conditions.

In the public sector, the right to strike or picket workplace conditions is determined by state law. First Amendment protection may be guaranteed for those workplace issues that are matters of public concern. For these case-by-case basis inquiries, please contact your local AFT affiliate or a lawyer.

**7. Are time, place and manner restrictions mandatory subjects of bargaining?**

Mandatory subjects of bargaining are those that directly impact wages, hours or working conditions (terms of employment). Time, place and manner restrictions are mandatory subjects of bargaining to the extent they impact working conditions for employees. So, for example, the employer should bargain the impact that its time, place and manner restrictions have on academic freedom, on a working condition, or on the discipline of employees who are alleged to violate such policies. Please reach out to AFT Higher Education for more guidance on how to address these policies appropriately through collective bargaining.

**8. Is civil disobedience protected?**

Civil disobedience is nonviolent unlawful conduct undertaken as a form of protest to raise awareness, increase pressure and effect social change. Civil disobedience is not protected by the

First Amendment, and individuals who practice civil disobedience may face legal or institutional discipline by the authorities or their employer.

**9. What are my free speech rights if I participate in civil disobedience?**

The authorities and public employers cannot “police” civil disobedience in a discriminatory manner. Rules regulating speech must be neutral and evenhanded regardless.

Additional Resources:

[Tips for Students Considering Engaging in a Protest Involving Civil Disobedience, PEN America](#)

[Civil Disobedience Training, NAACP](#)

[How to Plan a Peaceful Protest, PEN America](#)

[Open Letter to College and University Presidents on Student Protests, ACLU](#)

[Speaking Out as a Public Employee, NYCLU](#)