



Education | Healthcare | Public Services

AFT Members on Visas: FAQ on Rights and Risks in the Second Trump Era

The information provided here is intended for informational purposes only and does not constitute legal advice. It is essential to consult with your own attorney to discuss your specific legal situation and obtain advice tailored to your needs. Laws are constantly evolving, and the information provided may not reflect the most current legal developments.

1. Do I, as a worker on a visa, have speech and protest rights?

Yes! Workers on visas do have speech and protest rights. These rights are particularly strong around labor issues. However, participation in any illegal activity (including civil disobedience) could have serious immigration consequences.

Private sector workers

- In addition to the right to form, join or assist a labor union, the National Labor Relations Act protects the right of employees to engage in **“concerted activities for the purposes of collective bargaining or other mutual aid or protection.”**
- This means your employer may not fire you or engage in other retaliatory actions against you because of your protected speech. These protections extend to employees in unionized and nonunionized workplaces.
- Examples of protected speech include:
 - Discussions between co-workers about working conditions, collective protests or picketing about poor working conditions (wages, benefits, safety and health conditions in the workplace).
 - Speech about unionization, the desire to form a union or the benefits of a union. For example, this can include passing out union leaflets during off-duty time in nonwork areas or posting about unionization on social media.
 - Speech supporting legislation or political reform on workplace issues of concern to employees. For example, passing out literature supporting state minimum wage laws or laws against discrimination/harassment in the workplace, or opposing state right-to-work laws.

Public sector workers

- Public sector workers, including workers on visas, are entitled to protection from retaliation for certain speech activities under the First Amendment of the Constitution.
 - The First Amendment protects public employees from retaliation by their employer (or any other public entity, including the state and federal government) for speaking in their personal capacity on matters of “public concern.”
 - An example of this would be a worker protesting acts of government. Unlike speech protections under the NLRA, the First Amendment protects employee speech that is

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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unrelated to conditions in the workplace so long as the speech is on a matter of public concern.

- The First Amendment does not protect employee speech on matters of purely private concern, such as an employee's speech on an internal workplace grievance, but much of this speech may be protected by state labor law.

Retaliation from the U.S. government

- In some circumstances, the U.S. government has retaliated against individuals for their speech activities, with immigration actions like ordering deportation or refusing to renew an individual's immigration status.
- In [Ragbir v. Homan](#), the 2nd U.S. Circuit Court of Appeals (the federal court that covers New York, Connecticut and Vermont) held that the free speech protections of the First Amendment prohibit the government from retaliating against those critical of U.S. immigration policies by deporting them. This is a great case, but there have been cases from other federal courts that are not as protective.

2. Can I, as a worker on a visa, join, organize or vote for a union?

Yes! Workers on visas have the same rights as other workers to join, organize or vote for a union.

Private sector workers

- Workers on visas in the private sector have the same rights under the National Labor Relations Act as all other workers in the private sector to join, organize or vote for a union.
- In a [fact sheet](#) on the employee rights of immigrant workers, the National Labor Relations Board explains, "if you choose to talk to or take action with your co-workers to improve your working conditions, it is illegal for your employer to use your immigration status against you." For example, your employer cannot threaten your job or your visa because you tried to join or organize a union.

Public sector workers

Public sector workers are not currently covered at all by the NLRA or other federal laws; instead, they are covered by the laws in their state. Some state laws extend labor protections and collective bargaining rights to public sector employees.¹ These laws typically protect the rights of all employees covered by the law regardless of immigration status.

3. Can I, as a worker on a visa, participate in a labor strike?

Private sector workers

¹This website (<https://www.nctq.org/contract-database/collectiveBargaining#map-1>) will give you a sense of which states have protective laws for public sector workers, but ask your union rep/organizer if you're not sure.

- Under the NLRA, all covered private sector employees have the right to strike, regardless of the employee's immigration status.
- Under the NLRA, your employer may not threaten your immigration status because of your support of or participation in a strike. For example, an employer would be violating the NLRA by asserting that foreign students would lose their visas and have to leave the country because of a labor strike.

Public sector workers

- Many states have laws making it illegal for certain public sector workers to strike. For example, in most states it is illegal for teachers, police officers and firefighters to strike.
- In states where public sector workers have the right to strike, state labor rights typically extend to immigrant workers, and protections are similar to those in the private sector.

Potential impact of a strike on workers' immigration status

The nature and extent of a labor strike's impact on foreign workers' visas depends on factors such as the worker's immigration status, position and location of employment.

- **H-1B workers**: Once a person has begun work in the United States on an approved petition, the worker won't be deemed to be failing to maintain their status solely because they participated in a strike or any other work stoppage of workers. Participation by a nonimmigrant alien on an H visa in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation. [8 CFR Section 214.2(h)(17)]
- **F-1 student workers**: In both the public and private sectors, if an F-1 student worker's work is suspended during a strike, there's a chance that the worker's visa might be at risk upon certification of a labor strike by the U.S. secretary of labor. However, the likelihood of worker visas being affected by a labor strike is very small. Strikes are rare, and when they do occur, they do not typically last long enough for the secretary of labor to certify the existence of a labor strike. Please see the U.S. Immigration and Customs Enforcement's guide on the "[Impact of Labor Strikes on F-1 Nonimmigrant Students](#)" for more information.

4. What happens if I, as a worker on a visa, leave the U.S. for work or to visit family?

- There have been some issues with workers being unable to re-enter the U.S. after traveling abroad.
 - Workers here on single-entry visas must reapply for a new visa after leaving the country for any reason.
 - Workers have reported their new visa applications being delayed for months due a background check process known as "[administrative processing](#)."
 - For example, an Iranian Ph.D. student at Columbia University took a short trip to Canada during his Ph.D. program and then had to wait six months for the government to complete the administrative processing of his new visa application.
- We recommend anyone here on a visa consult with an immigration attorney and fully understand the risks before leaving the U.S. if they want to return.

5. Will the U.S. government under a Trump administration monitor my social media accounts?

- The State Department requires nearly all visa applicants (immigrant and nonimmigrant applicants) to submit their social media usernames from the past five years.
- Prior to President Joe Biden taking office, the Department of Homeland Security under the last Trump administration had [planned](#) to begin requesting social media usernames on all applications for immigration benefits and foreign travel to the U.S.
 - The specific platforms the agency planned to focus on included Facebook, Instagram, Reddit, Ask.fm, Weibo, Myspace, YouTube and LinkedIn.
 - DHS indicated at the time that it would not collect passwords and would only review publicly available information.
- In June 2019, a [Palestinian](#) student admitted to Harvard was originally denied entry into the United States after immigration officials went through his social media accounts. The immigration officials asked the student to unlock his phone and laptop and proceeded to search his social media accounts. He was questioned about his friends' social media activities and told by immigration officials that people he followed had expressed anti-U.S. political sentiments. The student returned to Lebanon after DHS denied his entry into the U.S. and canceled his visa. He was eventually granted a new visa by the U.S. Embassy in Beirut and allowed to enter the U.S. on an F-1 student visa.
- While we can expect legal challenges to be brought in this area, and hopefully progress will be made in protecting the privacy rights of immigrants, you should be aware that courts give a lot of discretion to the U.S. government in matters related to immigration and therefore progress may be slow.

6. What happens if I violate the terms of my visa or fall out of status while in the U.S.?

It is especially important during the Trump era that you comply with all the rules applicable under your visa or you could face deportation and/or a bar from re-entering the U.S. For example, you should ensure that all your information is up to date, that you are working (and studying, for our graduate student members) the correct number of hours per week, and that you are not engaged in any work activity not permitted under your visa. If you have any questions about what you may and may not do under your visa, you should consult an immigration attorney.

7. Where can I go for help on questions about my rights as a worker on a visa?

- Talk to your local union. It may be able to connect you to local resources, AFT staff who can assist you, and/or members of your congressional delegation.
- If you are a graduate student, your international student office on campus may have resources and referrals.

- The [National Immigration Law Center](#), a close ally of the AFT, has great resources on policy issues.
- You can find a list of pro bono immigration legal service providers at these websites:
 - <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers>
 - <https://www.immigrationlawhelp.org>

Web pages that are hyperlinked in this document:

- *Ragbir v. Homan*: <https://perma.cc/V37A-JD3C>
- Fact sheet on the employee rights of immigrant workers: https://www.nlrb.gov/sites/default/files/attachments/basic-page/node-3024/immigrant_employee_rights_one_pager_english_pdf_21860.pdf
- Impact of Labor Strikes on F-1 Nonimmigrant Students: https://www.ice.gov/doclib/sevis/pdf/impactLaborStrikesNonimmigrantStudents_FAQ.pdf
- Background check process known as “administrative processing”: <https://www.columbiaspectator.com/eye-lead/2019/04/24/extra-baggage-the-difficulties-graduate-students-and-postdocs-face-navigating-columbia-on-a-visa/>
- The last Trump administration had planned to begin requesting social media usernames on all applications for immigration benefits and foreign travel to the U.S.: <https://www.federalregister.gov/documents/2019/09/04/2019-19021/agency-information-collection-activities-generic-clearance-for-the-collection-of-social-media>
- In June 2019, a Palestinian student admitted to Harvard was originally denied entry into the United States after immigration officials went through his social media accounts: <https://www.bostonglobe.com/metro/2019/09/02/harvard-student-who-was-denied-entry-into-makes-campus-time-for-start-classes/02ZSgBnqAVk9fVtSPphU2N/story.html>
- The National Immigration Law Center: <https://www.nilc.org/>