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Public Employee Speech and The Heckler's Veto: Is There a Way Around It?

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The law that governs public employee speech has engendered some serious criticism. Public employers can impose adverse employment actions (suspensions, firings, denying raises or promotions) for much speech that would be protected by the First Amendment from any action the government might take as a sovereign (fines, jail, etc.). Most conspicuously, if an employer reasonably predicts ?disruption? as a result of the speech ? which, in this day and age, can be caused by the simple disagreement of an intended or entirely unintended audience ? it can impose an adverse employment consequence on its employee. This problem, sometimes referred to as the ?heckler's veto? because it elevates the views of opponents of the speech, lurks over the area of public employee speech.1

1 Patrick Schmidt, Heckler's Veto, THE FIRST AMENDMENT ENCYCLOPEDIA (2009), https://www.mtsu.edu/first-amendment/article/968/heckler-s-veto. View the Entire Article]