

PBS Standards

Defamation

Please note: This material is for informational purposes and does not constitute legal advice. Consult with counsel for any specific guidance on candidate appearances.

Overview

Defamation is any *false* information that harms the reputation of a person, business, or organization. Defamation includes both libel and slander. Libel generally refers to defamatory statements that are published or broadcast (more permanent) while slander refers to verbal defamatory statements (more fleeting). While defamation allegations are a common legal problem for media organizations, journalists and documentary filmmakers can reduce the likelihood of a lawsuit by following ethical guidelines such as the [PBS Editorial Standards](#), which stresses the importance of accuracy and fairness. Read the questions below to learn more.

FAQ

If someone sues me for defamation, what must they prove to win the case?

The laws of each state define defamation in specific ways. In general, a plaintiff who files a lawsuit asserting that a statement you published is defamatory must show that you:

- *published the statement*, meaning that it was read or viewed by at least one other person besides the plaintiff. Stories broadcast on television or published on the Internet would qualify.
- *identified the plaintiff*. Identification can occur by naming the plaintiff or showing the plaintiff's image through a photo or drawing. Identification also can occur by describing the plaintiff through recognizable descriptive characteristics.
- *harmed the plaintiff's reputation*. A statement can be "per se" defamatory, meaning that the words are defamatory on their face without any further information or context (e.g., assertions of criminal behavior, incompetence on the job, or sexual promiscuity). Sometimes, however, a statement that might appear innocent becomes defamatory when considered in greater context (e.g., asserting that John is dating Jane could be defamatory if Jane is married to someone else).
- *made a false statement of fact*. Statements incapable of being proven true or false, known as "pure opinion," are not defamatory (e.g., "Jane is a terrible boss"). Rhetorical hyperbole, or statements that cannot reasonably be understood as stating an actual fact, also are not defamatory. Courts carefully evaluate the context of the statement to determine whether it can be proven true or false.

Importantly, statements consisting of both personal opinions and verifiable facts can be defamatory (e.g., “I think Jane is a terrible boss because she steals money from her employees”).

- *had at least some level of fault.* A plaintiff who is a public official or public figure must prove that you published the statement with “actual malice,” a higher level of fault, while a plaintiff who is a private individual generally must prove that you acted negligently, a lower level of fault. (See below for more information about the fault requirement.)

How do I know if my subject is a public official?

Although there is no bright-line rule for who qualifies, a public official includes someone who has a position of authority in the government, i.e., someone who holds elective office (such as the president, a member of Congress, or a state governor), as well as someone who does not hold elected office but nevertheless has, or appears to have, substantial responsibility for or control over the conduct of governmental affairs. The U.S. Supreme Court has recognized that plaintiffs classified as public officials must show that the defendant acted with actual malice (the highest level of fault) in publishing the defamatory statement. See *New York Times v. Sullivan*, 376 U.S. 254 (1964).

Who is considered a public figure?

A public figure is someone who, although not a government official, still has power and influence over society. There are two types of public figures: all-purpose public figures and limited-purpose public figures.

All-purpose public figures “occupy positions of such pervasive power and influence that they are deemed public figures for all purposes.” *Gertz v. Welch*, 418 U.S. 323 (1974). Typically, these are individuals with widespread fame, such as celebrities and professional athletes. Like public officials, plaintiffs classified as all-purpose public figures must show that the defendant acted with actual malice in publishing the defamatory statement.

Limited-purpose public figures “have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved.” *Gertz v. Welch*. Typically, these are individuals who have gained prominence in a particular field or in connection with a particular controversy. Plaintiffs classified as limited-purpose public figures must prove actual malice only for defamatory statements that relate to matters in which they are considered public figures.

Businesses also can be classified as public figures. Courts evaluate factors such as whether the business is well-known by the average person in the area where the defamatory statement was circulated; whether the business is regulated by the government; and whether the business has been intensely scrutinized by the media.

Who is considered a private person?

Private persons consist of any individuals who do not qualify as public officials or public figures, as detailed above. The Supreme Court has determined that plaintiffs who are private figures

must at least show the defendant acted negligently—a lower standard of fault than actual malice—in publishing the defamatory statement. *Gertz v. Welch*. However, some states require private figures to prove more than negligence in cases that involve matters of public interest. *Stations are advised to consult with their local counsel about applicable local defamation laws.*

How does a public official or public figure prove that I acted with actual malice?

The actual malice standard means that the plaintiff must prove that you either (1) knew the defamatory statement was false; or (2) acted with reckless disregard for the truth—in other words, that you entertained serious doubts as to whether the statement was truthful.

In evaluating whether someone acted with reckless disregard for the truth, courts look to the person’s state of mind at the time the statement was published, considering factors such as whether the person had time to investigate the story or needed to publish it quickly and whether the source of the information appeared to be reliable and trustworthy.

How does a private person prove that I acted with negligence?

The negligence standard means that the plaintiff must prove that you failed to exercise reasonable care. An important consideration for the courts is whether a reasonable person in a similar situation would have acted in the same way. Following good journalistic practices in researching, writing, filming, and fact-checking a story can greatly reduce the risk of being found negligent.

If I describe a group of people rather than a particular person, can someone still successfully sue for defamation?

Maybe. In some cases, a group may be small enough for individual members to prove that they were identified—but courts have not expressly stated a specific number that qualifies as sufficiently small.

In general, a large group of bankers could not successfully sue for defamation based on the statement that “all bankers are thieves.” You should be mindful about such statements, however, particularly if there are only a few bankers in the community that is the focus of your story. A sympathetic jury could find that such a statement identifies specific members of that group.

If I publish/broadcast a retraction, will the defamation claim go away?

If your station receives a retraction request for a statement you published or broadcast, this could signal a pending lawsuit, and you should consult with local counsel before admitting liability. If, after careful review, you determine that you have made a factual error and the statement should be retracted, this could limit (but not eliminate) the station’s liability for defamation. It’s also possible that the retraction will satisfy the person who was threatening to file a lawsuit.

Some state laws require a plaintiff to give the media organization an opportunity to retract the allegedly defamatory statement before filing a lawsuit. The retraction generally must be as conspicuous as the original statement. While these laws do not eliminate the plaintiff’s ability

to file a lawsuit, they do reduce the damages that the plaintiff can recover. In California, for example, the plaintiff can recover only “special damages,” i.e., those damages related to specific monetary harm (such as lost wages) caused by the defamatory statement, as opposed to punitive damages and/or general damages for injuries that are difficult to quantify, like pain and suffering.

What if I report on someone else’s potentially defamatory statement? Am I still at risk?

Generally, you are responsible for everything you publish, even when the information comes from a third party. Therefore, you can be found liable for repeating a defamatory statement from a source; even attributing that source will not shield you from a lawsuit.

Courts have held, however, that media organizations are not liable for comments posted by third-party users on their websites, provided that the organizations did not encourage the defamatory comments or materially participate in the creation of the defamatory comments. (Screening and lightly editing comments to remove offensive language does not eliminate this immunity.) Courts have based these decisions on Section 230 of the Communications Decency Act, which provides: “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” See 47 U.S.C. § 230.

What if I report on a potentially defamatory statement made in court or in an official government proceeding?

In most states, fairly and accurately reporting on defamatory statements made during an official government proceeding, or in an official government document, will qualify as privileged and protect you from liability. This privilege (often known as the “fair report privilege”) also applies to fairly and accurately reporting on statements made during legal proceedings, such as witness testimony at trial and statements made in court by judges and attorneys. The purpose of this privilege is to encourage coverage of matters of public concern without the fear of liability. Because the extent of this privilege varies by state, stations should consult with local counsel with questions about whether the privilege applies to specific circumstances.

If you have any questions, please contact PBS Standards & Practices at: standards@pbs.org