

Employment Law Monitor

INSIGHTS ON RECENT DEVELOPMENTS IN FEDERAL AND STATE LABOR & EMPLOYMENT MATTERS

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NLRB Again Lodges Charges Against Employer Who Terminated Employee Based on Facebook Comments

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On May 18, 2011, the National Labor Relations Board (the “NLRB”) announced its issuance of a complaint against Hispanics United of Buffalo (“HUB”) arising out of HUB’s termination of five employees who posted comments on Facebook criticizing HUB’s working conditions. As we previously posted with regard to the [In re American Medical Response of Connecticut, Inc.](#) case the NLRB lodged a similar charge against American Medical Response of Connecticut, Inc. (“AMR”) on October 27, 2010 based on that company’s termination of an employee who posted remarks about her supervisor on her Facebook page.

In the HUB case, the complaint claims that one employee used Facebook to post a co-worker’s allegation that workers were not doing enough to help the organization’s clients. That prompted other employees to defend their job performance and criticize workload and staffing issues. HUB claimed that the Facebook comments constituted harassment of the co-worker who originally posted the comment and, therefore, the terminations were justified. The NLRB, however, disagrees.

The National Labor Relations Act makes it an unfair labor practice to take an adverse employment action against employees because they engage in “protected concerted activity”. Employees engage in “protected concerted activity” when they, among other things, discuss working conditions with other employees. The NLRB takes the position that comments made on Facebook are analogous to conversations among co-workers and thus constitute protected concerted activity.

The interplay between employees’ rights and social networking under the National Labor Relations Act may not become clear for sometime. However, there should be some clarity once a case gets tried before an administrative law judge. With regard to the HUB termination, a hearing is set for June 22, 2011 before an administrative law judge in Buffalo.

The NLRB has now made its position clear with regard to employee comments about working conditions made on social networking websites such as Facebook. As a result of the NLRB’s position and pending litigation, employers should review their social networking policies to ensure that the policies themselves do not prohibit lawful activity and invite an NLRB charge.

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