



Client Alert

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Overly Broad Social Media Policies: Are Employers at Risk?

Many businesses have rushed to adopt Social Media policies as they become increasingly aware that their operations can be hurt by employees posting comments about their employers on Facebook and other sites. Social Media policies come in many shapes and sizes, but beware of the broad, overly-restrictive, and hastily-drafted Social Media policy. A broad policy may not have the intended effect, may ignore the potential for using Social Media to a company's advantage, or worse, the company may find itself on the defensive end of a lawsuit.

The National Labor Relations Board (NLRB) recently filed a complaint against American Medical Response of Connecticut, Inc., an ambulance service, alleging that the company violated the National Labor Relations Act (NLRA) when it discharged an emergency medical technician for violating the company's Social Media policy. The policy in question sought to prevent employees from disparaging the company or its management, as well as prohibiting depiction of the company "in any way" on the Internet without the company's express permission.

The discharged employee posted vulgar comments on her Facebook page about her supervisor and criticized the company for its decision to make that person a supervisor in the first place - insinuating that the company allowed a psychiatric patient to be a supervisor. The Facebook posting drew comments from the employee's co-workers, to which the employee responded. The NLRA prohibits employers from disciplining employees for discussing working conditions, regardless of whether or not they are part of a union. The NLRB takes the position that the company's broad Social Media policy, along with the discharge of the employee, violates the NLRA because the employee and her co-workers were simply discussing their working conditions. According to a November 8, 2010 *New York Times* article about the case, Lafe Solomon, the NLRB's acting general counsel, said, "This is a fairly straightforward case under the National Labor Relations Act - whether it takes place on Facebook or at the water cooler, it was employees talking jointly about working conditions, in this case about their supervisor, and they have a right to do that."

The NLRB case demonstrates why implementing a broad and overly restrictive Social Media policy may not be the most advisable course of action. The best Social Media policies are well thought out and, more importantly, tailored to your individual business.

Attorneys in Armstrong Teasdale LLP's Social Media practice group regularly advise clients with respect to the legal issues arising from Social Media. The Social Media group assists clients with the development of their Social Media policies as well as providing training to avoid mishaps that can harm our clients. If your company does not have a Social Media policy, or if your employees do not understand the implications of their Social Media use, we can help.

For further information, please contact one of the following members of Armstrong Teasdale's Social Media group:

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