

Employment, Labor and Benefits Alert: Facebook Status Update: Protected Activity

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It was only a matter of time before the legal landscape protecting employees' activities confronted an employee's use of Facebook, which now has more than 500 million users.

This month, the National Labor Relations Board (NLRB) filed a complaint against an employer that terminated an employee who wrote on her Facebook profile, "love how the company allows a 17 to become a supervisor." The employer is an ambulance service and "17" is the company's lingo for a psychiatric patient. The employee's Facebook posting about the supervisor drew supportive comments from her co-workers on Facebook. The NLRB also took issue with the employer's policy prohibiting employees from making "disparaging" or "discriminatory" comments when discussing the employer, the employee's superiors, or other co-workers.

The National Labor Relations Act (NLRA) protects employees, both union and non-union, who engage in "concerted protected activity." For example, complaints about small wage increases among employees voiced directly to management are protected activity.

In bringing the complaint, the Board stated, "You're allowed to talk about your supervisor with your co-workers. You're allowed to communicate your concerns and criticisms you have. The only difference in this case: she did it on Facebook and did it on her own time and her own computer." The Board also said that a broad company policy prohibiting employees from making disparaging comments about supervisors is illegal under the NLRA, though not all activity will be protected if the comments are unrelated to work or are defamatory and not supported by facts.

ACTION STEPS

Most managers, whether in non-union or union workplaces, do not understand what is encompassed by "concerted protected activity." Indeed, many companies are not aware that the NLRA applies to even their non-union employees. Employers should be more cognizant of the potential application of the NLRA, particularly with respect to "concerted protected activity," and should train their managers about the subject. Employers should also ensure that managers do not take disciplinary action against employees who discuss their working conditions, whether at work or in forums such as Facebook, Twitter, and other social networking sites.

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