



Legal Alert: NLRB Claims Firing Employee Over Facebook Post is Illegal

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While it's not surprising that companies want to prohibit employees from using their social media sites to disparage the employer or disclose confidential business information, the National Labor Relations Board (NLRB) claims overly broad social networking policies violate federal labor law. The Board recently filed an unfair labor practice complaint against an ambulance service, claiming the company discharged an employee for making disparaging comments about her supervisor on her Facebook page, in violation of her right to engage in protected concerted activity. The Board also claims the company's social media policy is overly broad and interferes with the employees' right to engage in protected concerted activity. See *In re American Medical Response of Connecticut, Inc.*, Case No. 34-CA-12576 (filed October 27, 2010).

In this case, the employee was asked to prepare a response to a customer's complaint about her work. The Board claims the employee was unhappy because the company refused her request to have a union representative help her prepare the response. Later, the employee posted negative comments about her supervisor on her Facebook page from her home computer. Co-workers who viewed her page posted comments supporting the employee and criticizing the supervisor.

The NLRB claims the company fired the employee because of her Facebook postings and because these postings violated the company's social media policy. The company claims the employee was discharged for multiple, serious complaints about her behavior, including negative personal attacks about a co-worker posted on her Facebook page.

According to the Board's complaint, the employee engaged in concerted activity with other employees when she criticized her supervisor on her Facebook page and the company violated her Section 7 right to engage in protected concerted activity when it fired her for these postings. Additionally, the Board claims the company's Blogging and Internet Posting Policy, which prohibits employees from "making disparaging, discriminatory or defamatory comments when discussing the Company or the employee's superiors, co-workers and/or competitors" and from "posting pictures of themselves in any media, including but not limited to the Internet, which depicts the Company in any way, including but not limited to a Company uniform, corporate logo or an ambulance, unless the employee receives written approval from the EMSC Vice President of Corporate Communications in advance of the posting" is overly broad and interferes with employees'

exercise of their Section 7 rights.

Section 7 of the NLRA protects employees' right to discuss their employment among themselves. The NLRB's acting General Counsel takes the position that discussions on Facebook are no different from, and entitled to no less protection than, those that take place at the water cooler. Still, the Act does not protect all employee statements. On its own Facebook page, the NLRB states that a four-point test applies to determine when Facebook comments lose protected concerted status under the NLRA: (1) the place of the discussion; (2) the subject matter of the discussion; (3) the nature of the employee's outburst; and (4) whether the outburst was, in any way, provoked by an employer's unfair labor practice.

Employers' Bottom Line:

While this is the first unfair labor practice complaint filed by the Board based on an employer's social media policy, it is not likely to be the last. Employers should use caution when considering discharging or disciplining employees based on comments made on social media sites such as Facebook or blogs. Additionally, employers may want to review their social media policies to ensure that the language, especially any non-disparagement language, is not overly broad. Employers should also consider including a statement that the provisions of the social media policy will not be construed or applied in a way that interferes with employees' rights under federal labor law. We will keep you updated on any developments in this case.