

## NLRB releases report on social media cases

*McAfee & Taft EmployerLINC* Employment Law Update - August 23, 2011

**By Charlie Plumb**

During our recent webinar broadcast, “**When Social Media Throws You a Curveball**,” on August 17, 2011, our presenters discussed the National Labor Relation Board’s evolving approach to prosecuting employers who discipline employees for their use of social media. The following day, the NLRB’s Acting General Counsel issued a report describing 14 NLRB cases and its findings involving social media policies and actions taken by employers against employees regarding their use of social media.

In the report, the NLRB’s Acting General Counsel Lafe Solomon said, “I hope that this report will be of assistance to practitioners and human resource professionals.”

Each case was submitted by regional offices to the NLRB’s Division of Advice in Washington, DC. In four cases involving employees’ use of Facebook, the Division found that the employees were engaged in “protected concerted activity” because they were discussing terms and conditions of employment with fellow employees. In five other cases involving Facebook or Twitter posts, the Division found that the activity was not protected.

In one case, it was determined that a union engaged in unlawful coercive conduct when it videotaped interviews with employees at a nonunion jobsite about their immigration status and posted an edited version on YouTube and the Local Union’s Facebook page.

In five cases, some provisions of employers’ social media policies were found to be unlawfully overly-broad. A final case involved an employer’s lawful policy restricting its employees’ contact with the media.

A copy of this NLRB report is [available here](#) (PDF), and it provides some insight on how the NLRB may approach similar issues with employers in the future.



**Oklahoma City** Tenth Floor • Two Leadership Square 211 N. Robinson • Oklahoma City, OK 73102-7103  
(405) 235-9621 office • (405) 235-0439 fax

**Tulsa** 1717 S. Boulder Suite 900 • Tulsa, OK 74119 (918) 587-0000 office • (918) 599-9317 fax