

National Labor Relations Board Issues Social Media Report

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Recently, the Acting General Counsel of the [National Labor Relations Board \(Board\)](#) released a report, basically a score card, detailing the Board's actions on 14 cases involving social media. Employee social media use has been a hot topic for [the Board](#), for both union and non-union employers, and [for us](#).

The [Acting General Counsel's report \(PDF\)](#) is insightful and it covers a wide range of issues, including when employee social media use is protected by the National Labor Relations Act (NLRA), the permissible scope of employer social media policies, and how unions can get in trouble when using social media.

The report's discussion of cases involving employee discipline confirms things we have previously discussed: the NLRA protects employees who engage in concerted activity from discipline, but there are limits to that protection and certain activity will lose the protection. Based on a review of the report, it seems that the Board is willing to stretch the definition of protected activity to shield employee social media activity. For example, the report indicates that the Board has found protected activity where an employee called a supervisor an "a—hole" and were an employee referred to a supervisor as a "scumbag." It seems that the home team is getting the calls.

The report also details when employer social media policies end up out of bounds, which apparently, is quite frequently. The Board did not approve of any of the employer social policies reviewed, and found only one provision of one policy acceptable. The Board found that all of the policies were overly broad and not narrowly drawn; and therefore, in violation of the NLRA.

The report provides valuable insight into the Board's view of social media in the workplace, and the odds that will face employers, both unionized and non-union employers alike, if employees file charges related to social media use.

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