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Develop Clear Policy for Employee Social Media Use

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Employers beware: The National Labor Relations Board is scrutinizing company social-media policies — and their rulings apply to all companies, whether or not they are unionized. If Facebook postings or tweets involve working conditions or wages, employees are free to comment.

Many employers are unaware that the National Labor Relations Act prohibits employers — union or non-union — from interfering with an employee's right to engage in "protected and concerted activity," loosely defined to mean employee discussions or actions regarding wages, hours and other working conditions.

The NLRB, which enforces the NLRA, has taken a keen interest in employer rules that prohibit or discipline employees for engaging in such activity when using social-media sites such as Facebook or Twitter.

In *NLRB v. American Medical Response of Connecticut Inc.*, the company terminated an employee for violating its social-media policy when she referred to her supervisor as a mental patient in a "friends-only" Facebook post.

AMR's policy prohibited employees from making disparaging remarks about the company and/or supervisors, or depicting the company in any way on the Internet without company permission. AMR settled, and agreed to revise its allegedly overly

broad rules to ensure that it did not improperly restrict employees from discussing wages, hours and other working conditions with co-workers, even when not at work.

This is not to say that employers cannot discipline employees for inappropriate use of social media. For example, writing inappropriate and offensive Twitter postings that did not involve protected concerted activity are not protected by the NLRA.

In a recent case involving the Arizona Daily Star, a reporter was terminated after based on the content of messages he posted on Twitter, one of which read: "The Arizona Daily Star's copy editors are the most witty and creative people in the world or at least they think they are."

The newspaper, which did not have a social-media policy, warned him not to comment about the Daily Star in any public forum. He was eventually terminated for continuing to make derogatory comments that could damage the good will of the newspaper.

The NLRB dismissed the reporter's unfair-labor-practice charge, finding he was lawfully terminated for posting inappropriate unprofessional tweets, after having been warned not to do so, and because his conduct did not relate to terms and conditions of employment or seek to involve other employees in issues related to employment.

Given the NLRB's leap into the world of social media, employers need to develop a clear policy addressing their employees' use of social media both within and outside the workplace.

At a minimum, any policy must state that employees do not have any expectation of privacy and their communications may be reviewed by the employer if they are using employer provided communication resources such as computers and emails.

The policy should not be overbroad. However, a properly worded policy can prohibit employees from making comments that are libelous, abusive or anti-competitive and disloyal to their employer's interests.