

Corporate Social Media Policies Should Comply With Recent NLRB Decision

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The National Labor Relations Board (NLRB) recently issued a decision with significant impact upon employer policies that apply to employee use of social media. [*Costco Wholesale Corporation*, 358 NLRB No. 106 (Sept. 7, 2012)]

It is not uncommon that employer social media policies include rules that prohibit employees from using social media in ways that might harm third parties, or potentially compromise company information. Corporate policies may seek to restrict the posting of negative or defamatory statements about other individuals or employees, or posting/sharing information the company prefers to keep confidential.

Unfortunately, such rules may violate the National Labor Relations Act (NLRA) which protects the right of employees to (a) form, join, or assist a union, (b) choose representatives to bargain with an employer on their behalf, (c) act together with other employees for their benefit and protection, or (d) choose not to engage in any such activities.

As such, employers now find themselves in a bind because overly restrictive social media policies may prevent employees from exercising these protected activities.

For that reason, it is crucial to review social media policies currently in place, with the assistance of legal counsel, and revise such if necessary.

In *Costco* the NLRB ruled that broadly stated social media policies which violated the NLRA included, among others, those which:

1. Prohibit employees from electronically posting statements that damage any person's reputation;
2. Prohibit the unauthorized posting, distribution, or alteration of any material on company property; and
3. May reasonably be interpreted as prohibiting employees from discussing their wages and conditions of employment with other employees and third parties, including union representatives

Employers seeking to restrict or outline acceptable social media activity should carefully craft these social media policies that includes carefully limited rules and prohibitions, and also includes examples of the protected activity the policy seeks to restrict.

An additional solution, but one which requires legal review prior to implementation, may be to add a qualifying statement in the social media policy that notwithstanding anything contained therein, no rule, restriction or prohibition shall limit or prohibit the right of an employee to engage in protected activity under the NLRA, including the protected activities referenced above. It is important to discuss any proposed change with legal counsel to insure the change is appropriate given the totality of your overall policy.

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