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Facebook Posts and Employment Decisions: It's in the Social Media Policy

Stories abound about the possible repercussions of sharing pictures, stories, and opinions on blogs and Facebook posts. Not uncommon is the temptation to vent frustrations from the office to family and friends using the latest social media platforms. Giving in to such temptation may, however, result in even more frustrations. Such was likely the case for a Connecticut ambulance service employee who was fired for calling her supervisor a "scumbag" on a personal Facebook page posting.

American Medical Response, Inc. of Connecticut ("AMR"), as part of the blogging and internet posting policy contained in its Employee Handbook, prohibited employees from "making disparaging, discriminatory, or defamatory comments when discussing the Company or the employee's superiors, co-workers, and/or competitors." So when an AMR employee posted negative comments about her supervisor on her Facebook page, described as including profanity and referring to her supervisor as a "psychiatric patient" and "scumbag," she was terminated.

The woman was a union member and her termination was reported to the National Labor Relations Board ("NLRB"). Upon investigation, the NLRB issued a complaint against AMR, alleging that AMR and its overreaching policy violated a worker's protected right to discuss working conditions with other employees. This is known as "protected concerted activity."

"Protected concerted activity" is protected by federal law in Section 7 of the National Labor Relations Act ("NLRA"). Commonly referred to as "Section 7," this statute broadly protects employees' rights to form or join a union, to strike and, more generally, to discuss the terms and conditions of employment. These rights are protected and apply to a workplace whether unionized or not.

The NLRB asserted that AMR's social media policy violated Section 7 of the NLRA because it could have a "chilling" effect on protected concerted activity. Essentially, the NLRB claimed a company with a social media policy that limits or discourages protected employee activity may be subject to a charge of unfair labor practice, even if an employee is not disciplined under the policy.

The day before the hearing for the NLRB's complaint against AMR, the parties reached a settlement agreement based on AMR amending its internet posting policy. The amendments included two main revisions: 1) employees are allowed to discuss wages, hours, and working conditions with other employees outside the workplace; and, 2) AMR will not discipline or fire any employee engaging in those discussions.

The NLRB's position in this case demonstrates how an employer's attempt to protect its image in the burgeoning social media world could run afoul of employee rights and points to the need for all employers to be aware of legal issues stemming from employment policies that seek to respond to this age of connectivity.