Fired for Facebooking: Beware for Potential NLRB Action

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The National Labor Relations Board (NLRB) recently filed a complaint against a company that fired an employee for criticizing her supervisor on Facebook. This is the first case in which the NLRB has argued employees' criticisms of their supervisors or companies on a social networking site are generally a protected activity under the National Labor Relations Act (the Act).

The employee in question, an emergency technician, was required to prepare a response to a customer complaint. When she asked her supervisor for permission to have her Teamsters representative help prepare her response, this request was denied. The technician's employer, American Medical Response of Connecticut (AMR), fired her after she criticized her supervisor in a posting on Facebook. The company argued she was fired for violating its social media policy, which prohibited employees from using social media sites to depict the company "in any way." A key fact, from the NLRB's perspective, was that several of the employee's co-workers posted supportive comments on her Facebook page. The NLRB's position is that an employee is allowed to discuss her supervisor with her co-workers, and this activity is no less protected online than it is face-to-face.

The NLRB alleges AMR's policy was overly broad and violated the Act by preventing employees from discussing working conditions. The New York Times quoted NLRB general counsel Lafe Solomon as saying, "this is a fairly straightforward case under the National Labor Relations Act -- whether it takes place on Facebook or at the water cooler, it was employees talking jointly about working conditions, in this case about their supervisor, and they have a right to do that." When evaluating similar facts or cases, multiple employees engaging in the discussion or activity will be a factor suggesting an NLRA violation.

The Act protects employees' rights to engage in "concerted activity." Concerted activity includes, among other things, two or more employees discussing workplace conditions or their supervisors. This protection extends to employees whether or not they are unionized. While employers may have policies requiring loyalty to the company and prohibiting disparagement of the company, these policies must be carefully drafted to avoid violating the Act. The NLRB alleged that AMR's policy was overly broad, and, as a consequence, violated the Act.

This case indicates the NLRB may be paying special attention to the way employers try to regulate social media use by their employees. Even in non-unionized workplaces, employers should be sure their social media policies effectively protect the company but do not chill employees' rights to discuss the workplace in a non-disparaging

manner. Employers should carefully review any social media policies and should think twice before taking adverse action against an employee who speaks out against the company or a supervisor in a manner which could be construed "concerted activity."

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