

## **NLRB Issues Report on Social Media**

By [Kyle McClain](#) on Thu, Feb 02, 2012

By [news release](#) last week, the NLRB's Acting General Counsel announced the publication of his second report on social media cases reviewed by the General Counsel's office. The use of social media by employees and related action by employers became a hot topic for the NLRB in 2011, and continues into 2012.



The report, available on the NLRB website [here](#), summarizes fourteen recent NLRB cases which “present emerging issues in the context of social media.” It follows an initial memorandum released by the Acting General Counsel on August 18, 2011. As the NLRB's press release summarizes, half of the cases involve questions about social media policies created by employers, finding five of them unlawfully broad, one lawful, and one lawful following revision. The remaining seven cases involved questions of the lawfulness of employee discipline following the posting of comments on Facebook.

The release highlights two important, albeit general, conclusions to be drawn from these cases:

- Employer policies should not be so sweeping that they prohibit the kinds of activity protected by federal labor law, such as the discussion of wages or working conditions among employees.
- An employee's comments on social media are generally not protected if they are mere gripes not made in relation to group activity among employees.

### **Bottom Line for Employers**

The NLRB's enforcement of the NLRA as it pertains to employee use of social media and employer enforcement of social media policies is still evolving, and as demonstrated by the cases in the Acting General Counsel's report, often subject to fact-specific determinations. For now, there is not yet a clear set of rules for employers to follow in this area of law in order to avoid NLRB sanction. As such, it is important that employers contact legal counsel when contemplating discipline arising from employee use of social media. Further, employers should work with counsel to craft social media policies before such circumstances arise in order to avoid becoming an NLRB guinea pig.