

Social Networking Site Use Policy: Part II

In February, we updated you on some potential issues raised by the increasing use of Facebook and other social networking sites. We want to make you aware of a recent development that may impact your approach to creating a social networking site use policy, or your review of an existing policy.

On October 27, 2010, the National Labor Relations Board (NLRB) filed an unfair labor practice complaint against an employer, alleging the employer violated the National Labor Relations Act (NLRA) by illegally firing an employee after she criticized her supervisor on her Facebook page by mocking him and using several vulgarities. Several of the employee's co-workers visited the page and made comments supportive of the employee and critical of the supervisor. See *American Medical Response of Connecticut, Inc.*, Case No. 34-CA-12576 (Region 34, NLRB).

Like many companies, the employer's internet use policy prohibited employees from making "disparaging" or "discriminatory" comments about the employer or its supervisors, and barred employees from depicting the company on social media sites without the company's permission. The NLRB's complaint charges that the employer's application of this policy unlawfully interfered with the employee's right under Section 7 of the NLRA to engage in "concerted, protected activity," *i.e.*, to communicate with co-workers about the terms and conditions of employment. (Section 7 safeguards employees' concerted, protected activity regardless of whether their workplace is unionized.) Importantly, the NLRB's complaint also appears to allege that an employer violates Section 7 simply by having in place an anti-disparagement social networking policy like the one at issue here, even if the employer does not actually apply the policy to impose discipline.

In light of this development, employers should consider adding language to their social media policies explaining that the policies are subject to employees' rights to engage in activity protected under Section 7 of the NLRA. Although it could take years to fully resolve the issues raised in the NLRB's complaint, adding this language now would be wise, given the novelty of these issues and the increasingly work-related nature of social media.

If you have any questions regarding your company's social networking site use policy or what may constitute "concerted, protected activity" under the NLRA, please contact:

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