

**EXAMINE YOUR POLICIES IN LIGHT OF THE
“FACEBOOK FIRING” CASE**

As the use of social networking websites continues to grow, so do employers’ concerns about what employees post on such websites. While many employers have implemented policies that prohibit employees from making disparaging comments about their employment, the National Labor Relations Board (“NLRB”) currently takes the position that many of these policies impermissibly prohibit employees from freely discussing their wages, hours, benefits, and working conditions.

In October 2010, the NLRB issued a complaint against American Medical Response (“AMR”), a Connecticut ambulance service company, after it terminated a non-union employee for posting negative comments about AMR and the employee’s supervisor on Facebook. AMR’s policy prohibited employees “from making disparaging, discriminatory or defamatory comments when discussing the Company or the employee’s superiors, co-workers and/or competitors.”

In issuing the complaint, the NLRB alleged that AMR’s policy violated Section 7 of the National Labor Relations Act because the employee’s comments involved her protected right to discuss and criticize the terms and conditions of her employment. The day before the scheduled hearing, AMR agreed to settle the case, and in doing so, agreed to revise its “overly broad” policy to permit its employees to discuss their wages, hours, benefits, and working conditions with co-workers and others while not at work. AMR also agreed that it would not discipline or discharge its employees for engaging in such discussions via the Internet while not at work.

The AMR “Facebook firing” case was the first in a recent series of complaints filed by the NLRB against employers who terminated employees for their critical comments on social networking sites. In May 2011, the NLRB issued a complaint against a Chicago area car dealership after the dealership terminated an employee who had posted critical photos and comments on Facebook about the dealership. Also in May, the NLRB issued a complaint against a Buffalo non-profit organization after it terminated five employees for posting critical comments on Facebook about their working conditions, including their work load and alleged under-staffing issues.

Employers can be forced to defend an NLRB unfair labor practice complaint even if the employer is not unionized, and even if no disciplinary action was taken against an employee. The mere existence of a policy that limits or discourages employees from engaging in protected activity can be enough to serve as the basis for a ULP complaint.

In light of the NLRB’s current position, employers should evaluate their policies to ensure they are not so broad as to prohibit or discourage employees from criticizing their wages, hours, benefits, or working conditions via Internet while they are not at work.

For More Information

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