

Facebook Firing May Violate Employee's Rights

By James Hammerschmidt

Social media has exploded over the past decade and is quickly becoming a workplace issue. Facebook, Twitter, and LinkedIn are no doubt the most prominent of the social media outlets. Although they provide a great opportunity to collaborate, network, and share information, these sites are also rife with misinformation, or worse, downright lies.

Companies seek to protect their image and their brand by taking action against employees and others posting negative comments. Those attempts may prove to be a bit more problematic, however, now that the National Labor Relations Board (NLRB) has entered the social media fray in conjunction with a case that could have a significant impact on employers.

In a recent, ground-breaking complaint filed by a regional office of the NLRB against American Medical Response of Connecticut (AMRC), a Connecticut ambulance company, the NLRB asserted that the employer violated the National Labor Relations Act (NLRA) when it discharged an employee for posting critical comments about her supervisor on Facebook. AMRC's policy prohibits employees from "making disparaging, discriminatory, or defamatory comments when discussing the Company or the employee's superiors, co-workers and/or competitors."

The NLRB position is an extension of its long-held interpretation that the NLRA covers "concerted" activities by employees, without regard to whether their workplaces are unionized. In its complaint, the NLRB asserts that AMRC's Internet policy is an overly broad work rule because it prohibits conduct protected by §7 of the NLRA – discussing working conditions with other co-workers.

According to NLRB General Counsel Lafe Solomon, the company's rule was overly broad and inappropriately limited employees' right to discuss working conditions among themselves. "This is a fairly straightforward case under the NLRA, namely 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."

The resolution of this complaint will most likely center on whether the employee's actions were "concerted" since her Facebook post was indiscriminately directed towards both coworkers and non-coworkers. The NLRB takes the position that because other employees responded and commented, it was concerted. A hearing before an NLRB Administrative Judge in the case begins on January 25, 2011.

In the meantime, any move to discipline or terminate an employee for social media postings, or for other actions in the workplace that are critical of the company, its supervisors or its policies, should be handled with great care. Employers should also review their social media policies and any other policies that ban criticism of the company.