

# NLRB Social Media Stance & Facebook Passwords Focus

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As companies across the country struggle to create or update social media policies, the NLRB may soon provide more clarity on the content of acceptable policies. At a seminar on March 24th, National Labor Relations Board (NLRB) General Counsel Lafe Solomon indicated that an NLRB ruling would be coming out in the next couple of weeks containing guidance on what should and should not be in a company's social media policy. The task for employers, as we have described in previous posts is to come up with policies that regulate what non-supervisory employees can and cannot do in social media without violating the mandate of the National Labor Relations Act's Section 7 guarantee that employees can engage in concerted effort to address issues of wages and other terms and conditions of employment.

Speaking at the National Conference on Equal Opportunity Law, sponsored by the American Bar Association's Labor and Employment Section, the General Counsel made it clear that employers could not simply rely on a disclaimer at the end of social media policies stating that nothing in the policy is intended to violate the NLRA. He further made it clear that the biggest vice in such policies is the use of vague words such as a ban on "disparaging" the Company or its employees. Most employees would have no idea whether such a vague word covers discussions about an employer's wages etc.

At the same time, a controversy is brewing over some employer's demands that job applicants provide their Facebook passwords during job interviews or on applications. It's an issue that is attracting national media attention, including NBC's Today Show. Personal information such as gender, race, religion and age are often displayed on a Facebook profile, but using them for employment purposes can violate employment laws.

On March 23rd, Facebook warned employers not to demand passwords for applicants' Facebook pages. Senators Charles Schumer (D. NY) and Richard Blumenthal (D. Conn) have asked the Justice Department and the EEOC to begin investigations into the practice, which they say might violate the Computer Fraud and Abuse Act as well as the federal anti-discrimination laws. The practice also may conflict with Facebook's own Terms of Service, which prohibit the sharing of passwords.

Stay tuned for further NLRB guidance and developments on the Facebook front.