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Employment Law Update

March 15, 2011

Employee Fired Over Facebook Posts Backed by NLRB

NLRB takes stance on discriminatory discharge for Facebook comments

The NLRB alleged that American Medical Response of Connecticut, Inc. engaged in unlawful labor practices by discharging an employee for criticizing her supervisor on her Facebook page. The NLRB alleged the Facebook posts by the employee, Ms. Dawnmarie Souza, were made in regards to discussions of the terms and conditions of her employment with co-workers and constituted protected concerted activity. Ms. Souza posted negative remarks about her supervisor on Facebook after her supervisor threatened to discipline her for requesting a union representative for an investigatory interview concerning a customer complaint about Ms. Souza's work. Ms. Souza's co-workers responded to her Facebook posts, leading to further negative comments about the supervisor. Ms. Souza was suspended and later terminated for violating the company's internet policies.

The NLRB allegations were subsequently settled. In a February 7, 2011 press release, the NLRB noted the company maintained overly-broad rules regarding Internet postings and communications between employees. Specifically, the Internet policies were required to be revised to ensure they did not improperly restrict employees from discussing their wages, hours and working conditions with co-workers and others while not at work.

The American Medical Response of Connecticut, Inc. complaint reflects the NLRB's conclusions that Facebook postings discussing wages, hours and working conditions with co-workers directly impact the terms and conditions of employment and are protected activities. However, where an employer disciplines an employee for Facebook posts that do not implicate terms and conditions of employment, such discipline will not violate the National Labor Relations Act.

Employers should be aware of this latest NLRB complaint and settlement and review their Internet policies to carve-out the protected activity identified by the NLRB. While discipline for out of work discourse that does not relate to the terms of conditions of the workplace will not support a retaliation claim under the Act, this latest NLRB complaint should serve as a warning to employers to review the facts and circumstances of such activity prior to issuing any discipline.

Please contact us if you have any questions:

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Sources:

U.S. NLRB, Case No. 34-CA-12576, American Medical Response of Connecticut, (filed Jan. 19, 2010) Complaint (Oct. 27, 2010)
U.S. NLRB, Press Release R-2794; 11/2/2010, Complaint alleges Connecticut company illegally fired employee over Facebook comments.
U.S. NLRB, Press Release R-2815; 2/7/2011, Settlement reached in case involving discharge for Facebook comments.
U.S. NLRB, Advice Memorandum, 5/5/2010, Cases 22-CA-29008 et. al.