



Social Media Update For Employers

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Employee use of social media in the workplace is a legally evolving area that continues to be a problem for employers, who are urged to enlist the help of legal counsel in formulating social media policies. In particular, the National Labor Relations Board (NLRB) has come down hard on employers who it deems to have violated the National Labor Relations Act (NLRA) in setting social media policies.

The NLRA was enacted primarily to protect employees' rights to organize, which, with the advent of social media, also takes place online. This means that employees have the right to discuss conditions of employment with each other and even a casual conversation online about working conditions can be protected under the NLRA.

Unfortunately, the NLRB has not always provided clear guidance with respect to what it wants to see in employer policies and guidelines around social media. However, that situation is changing as the Board has issued three separate reports on social media in the last 10 months.

While the first two reports served as an indication that the NLRB was scrutinizing employers' social media policies, many employers felt that the Board's position on what was acceptable content for social media and related policies was lacking clarity.

Employers should urgently review social media policies to ensure that they comply with the Board's guidance and provide sufficient context and examples so as to be unambiguous from the perspective of employees. Remember that the NLRB takes the view that a company policy on almost any subject could be construed as chilling employees' protected rights.

Additionally, the guidance gleaned from this report is not applicable solely to social media policies, but also to policies on confidentiality, media contact and employee conduct.

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