



Social Media In The Workplace

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During the past year the National Labor Relations Board (NLRB) has issued several rulings regarding employee rights to make work-related comments on social media. To many employers, these statements seem confusing and counterintuitive. In a case involving a car dealership, the board ruled that an employee could not be fired for his "cyber-rant" about the "overcooked wieners" served at a party for customers. The NLRB concluded that the salesman's comments on Facebook were "protected concerted activity" for "mutual aid and protection" under the National Labor Relations Act (which applies to all employees, whether unionized or not). This was because the marginal food served at the party could affect the salesman's and his co-workers' compensation by giving customers a bad impression of the dealership.

But at the same time, the board ruled that the salesman could be fired for posting comments about an accident that occurred at a dealership next door (when a 13-year old was allowed behind the wheel of a car and drove it into a pond) because this social media activity "had no connection to any of the employee's terms and conditions of employment."

Similarly, the board recently stated that it is unlawful for a company to adopt what would seem to be common sense general policies stating that employees should not: make "offensive, demeaning, abusive or inappropriate remarks"; participate in activities that defame the company on company time; release confidential guest, employee or company information; reveal nonpublic company information on public sites; use the company's logo or trademarks for noncommercial purposes; post personal information of others without their permission; or "pick fights."

The board's general counsel also deemed unlawful a policy encouraging employees to resolve work concerns by speaking with co-workers, supervisors or managers. He also disapproved a policy encouraging employees to "avoid harming the image and integrity of the company." In fact, he said that almost all employer social media policies the board reviewed were overbroad and unlawful.

As the social media explosion continues, companies can legally guide employees regarding the boundaries of acceptable conduct. To do so, however, they must provide context in the form of concrete examples. Otherwise, the board will almost certainly reject the employer's approach.

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