



Can I Prohibit An Employee Posting Photos Of An Accident?

Insights

7.15.13

I was fortunate last week to spend time in Denver with my buddies on the AGC National Safety Committee. We had a good discussion on safety apps and technology, which led into discussions about *“can I discipline an employee for taking and posting photos of a work site accident,”* or *“can we discipline an employee for cursing the company, saying derogatory things, and pasting our logo on his Facebook, “kick” or other social media site?”* We then discussed whether an employer could prohibit taking and posting photos of a customer’s site, including where secret or proprietary equipment and processes might be involved ... and how to respond if the owner of a multiemployer site told the contractor not to allow photos and and posting of about their company or property? But I’m getting ahead of myself. Let’s first review a few social media basics.

Many of you already know that the NLRB has aggressively attacked employer rules about electronic media, professionalism, disparagement, and confidentiality because they claim that such rules may infringe upon employee Section 7 rights to engage in concerted protected activity about conditions of employment. Forget common sense and reason, the NLRB has struck down the overwhelming majority of such policies it has reviewed.

I promised my AGC Brethren that I would post some follow-up information and I’ll start with examples of policies and discipline that the Board has found unlawful. Later, we’ll wrestle with some safety driven scenarios.

1. A rule that employees not “release confidential guest, team member or company information;”
2. A rule instructing employees “not to share confidential information with coworkers unless they need the information to their job;”
3. A rule threatening employees with discharge or criminal prosecution for failing to report unauthorized access on issues of confidential information.
4. A rule instructing employees to be sure that their postings are “completely accurate and not misleading and that they do not reveal non-public information on any public site;”
5. A rule that instructs employees not to “reveal non-public company information on any public sites;”
6. A rule that cautions employees that “when in doubt about whether the information you are considering sharing falls into one of the prohibited categories, do not post. Check with the

- Employer to see if it's a good idea;"
7. A rule that prohibits employees from posting photos, music, videos and "personal information of others without obtaining the owner's permission and ensuring that the content can be legally shared;"
 8. A rule prohibiting employees from using the Employer's logos and trademarks. (Apparently a rule prohibiting the commercial use of an Employer's logo or trademarks would be lawful.)
 9. A rule that "offensive, demeaning, abusive or inappropriate remarks are as out-of-place online as they are offline;"
 10. A rule prohibiting disclosure of personal information about the employers, employees and contingent workers;
 11. A rule prohibiting employees from commenting on legal matters;

Now let's look at some "employee posts." Protected or Unprotected?

PROTECTED: Referring to a supervisor as a psychiatric patient, a scumbag and a "d**k." (Might be libel though!)

UNPROTECTED: Newspaper reporter's tweet: "What?!? No overnight homicide? WTF? You're slacking Tucson."

PROTECTED: Complained about wages and discussing a potential walkout to protest such conditions."

UNPROTECTED: Bartender's Facebook post calling customers "rednecks" and stating he hoped they choked on glass as they drove home."

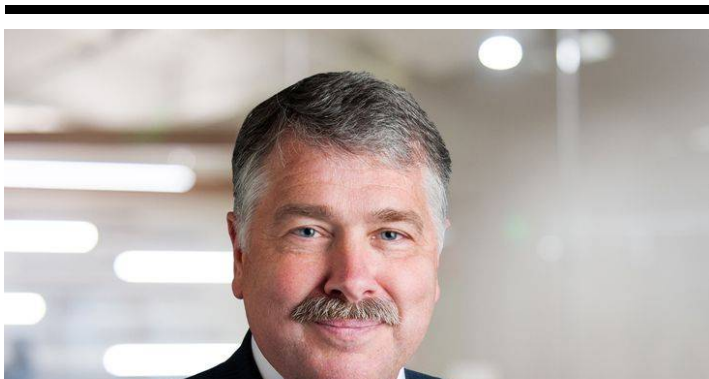
UNPROTECTED: Posting that a supervisor's actions in chewing her out about a customer complaint. (The Board found this to be griping, and that even though other employees responded, it was to say that the employee was whiny and had a personal gripe).

PROTECTED: Employee complained online that she wanted her employer to close one hour earlier for safety reasons and wrote: "Bettie Page would roll over in her grave ...and (supervisor) is 800 miles away and yet she continues to make our lives miserable."

We'll discuss the reasoning and patterns, to the extent any exists, regarding some of these decisions in one of my next posts.

Howard

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Howard A. Mavity

Partner

404.240.4204

Email