



Attractive Women! Retaliation Claims! Social Media! Mixed Drinks! In a Wage-Hour Case?

Insights

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Ok... I admit to sounding like a British tabloid writer. However, how often can one discuss a Fair Labor Standards Act (FLSA) case set in an upscale bar, involving allegations of retaliation and threatening social media posts? I suspect that lawyers dream of such cases.

Sounds great, you say, but why is this post not on our fine Wage-Hour Blog? **Because it illustrates the convergence of two increasingly common trends... complaints about workplace violence concerns and whistleblower claims.**

Thanks to my friend and fellow lawyer/blogger, Eric Meyer and his post on this recent Tennessee case:

Manager's drunk Facebook threats + Boss's Buddha blogging = retaliation claim?

You may want to read Eric's Blog entry, but one immediate and obvious lesson is not to Blog about current or ex-employees who sue or make other claims against the employer.

Allegedly, a supervisor posted the following deeply philosophical musing on a frequently viewed Facebook page:

Wednesday, May 11, 2011

"By the way Lil, you should be getting served with a lawsuit. No worries just sign for it". This particular case will end up pissing me off cause it is coming from someone we terminated for theft. I have to believe in my heart that somewhere down the road, bad people end up facing bad circumstances!

*I have been reading the basics of Buddhism and am going to a class on Monday. The Buddhist way would be to find beauty in the situation and release anger knowing that peace will come. Obviously, I am still a very new Buddhist cause my thoughts are " f ***(author revisions) that bi***". Let me do my breathing exercises and see if any of my thoughts change. Lol*

The complaining employee subsequently claimed that the individual's posted status seemed like a threat to her. The following status may look to you like a foolish snarky comment, and not a real threat. However, when one makes such a statement, one should consider the law of unintended consequences... such as a retaliation claim!

Dear God, please don't let me kill the girl who is suing me. That's all.

The plaintiffs haven't yet prevailed, and may well lose. However, in February, 2013 the Federal Court dismissed the employer's Summary Judgment Motion. My read of the situation? the employer may win because of various legal arguments, but the behavior was enough to get past summary judgment and to a jury. In lawyer-speak, "this is not good." Well, it is good from a standpoint of someone earning fees, but I suspect that both the defense counsel and the employer would prefer to have this embarrassing matter done with.

Lessons Learned...

1. An employer can NEVER remind employees too many times that they must be prudent about what they e-mail or post at work and at home.
2. As I have emphasized in my frequent Blogs about [OSHA Retaliation Claims](#), [Workplace Violence](#), [Threatening Employees and other concerns](#), retaliation and whistleblower claims are exploding. Make sure that supervisors are aware of the many types of protected workplace conduct.
3. Use this opportunity to remind supervisors to never discipline or counsel employees in anger or in a knee-jerk fashion. Tell them to pause, think through the facts and consider the employee's personality, past history, and other factors... and then act.
4. Before you fire an employee for such electronic behavior or set out broad new social media rules, review the current state of the law, including the NLRB's positions.
5. What's my favorite closing admonition? Never assume that this stuff could not occur in your workplace.

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