Discharge for Facebook Postings by Employees in France Upheld by Labor Tribunal (Barbera v. Société Alten SIR; Southiphong v. Société Alten SIR)

Insights
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Companies with employees in France should find of interest the recent decision of a French labor tribunal upholding the discharge of two employees for posting "denigrating" and "rebellious" comments about their employer on a Facebook page. (Barbera v. Société Alten SIR; Southiphong v. Alten Société SIR (Prud'hommes de Boulogne-Billancourt, Nos. RG-F-/326/343), November 19, 2010.)

Background of Case. According to the published tribunal opinion, three employees of Alten SIR, a French consulting company located near Paris, posted comments in late 2008 from their personal home computers on Facebook about Alten SIR managers, including its Human Resources Director. The conversation appeared on one of the three employee's Facebook page, with comments by two other employees, including the individual responsible for recruiting at that company. The comments included the statement by one employee requesting the other to join what he called a "club des néfastes" (club of the "evildoers" or "ill-fated" employees) for those whom Human Resources Director was alleged to have held in poor esteem. Among the statements in this exchange included an employee's statement, "welcome to the club", and that in order to join the club des néfastes members had to make the Human Resources Director's life "impossible" for many months.
The Facebook page allowed access of "friends of friends", including other Alten SIR employees, to its contents. Upon being shown the screenshot image of the Facebook conversation, the employer discharged all three employees for what it considered the serious violation of "d'incitation à la rébellion contre la hiérarchie et dégnirement envers la société" (translated to mean the serious fault of inciting a rebellion against management and making denigrating comments about the employer).

The employee on whose Facebook page the comments appeared chose mediation and was not part of this lawsuit. Two of the employees filed a complaint in January 2009 before the Conseil des Prud'hommes, the initial labor court, demanding damages, interest, compensation and costs for unjustified termination. In addition, one of the employees brought suit for the unlawful use of a temporary contract.

The two employees who brought the complaint argued the screenshots of the Facebook conversations should not be allowed as evidence before a tribunal because: 1) their privacy rights had been violated in that the Facebook page was private and not accessible to all Facebook users; and 2) the comments were not meant to denigrate the company but instead were meant to be

and 2) the comments were not meant to denigrate the company but instead were meant to be humorous, which could be shown by the use of the "smiley" symbol on the posting and with other indications that it was meant to be in jest.

The employer argued it was not a violation of the employees' privacy to enter the screenshot into evidence because: 1) the list of Facebook "friends of friends" included the employee who owned the Facebook page and other Alten SIR employees; and, 2) the Facebook page was capable of being read by people outside the company during the time period in which it had been posted.

Court Opinion. The French Conseil found that it was not a violation of the employees' privacy to allow the admission of the screenshot into evidence before a tribunal of the actions of the employees as the Facebook conversation could have been read by people outside of the Company. The Court upheld the discharge of the two employees, stating that by participating in the exchange, they abused their right of expression under the French Labour Code Section L.1121. The Court found that the conversations could be considered as an incitement to rebellion against the Company's hierarchy, and that they could be considered a denigration of Alten SIR's image, and therefore the behavior could be considered serious misconduct. It has been reported that the employees' attorney will appeal the decision to the Paris Court of Appeal.

Lessons for Employees in France and Elsewhere. Employees in France and elsewhere should take care not to publish or post information on Facebook and elsewhere that could be considered derogatory or defamatory about the employers or managers, or that violate any policy of their employer, even when the Facebook postings are entered at home on an employee's home computer. Even in countries such as France, where there are substantial procedural and legal safeguards against discipline and discharge, this case, at least at the labor tribunal level, found for the employer due to the statements made by employees about their employer on Facebook. Employers should take steps to create and publish policies for all employees that define what Internet, Facebook, and other infractions could lead to discipline, up to and including separation of employment, and employees should be cautious about comments they make on their Facebook pages regarding their employers.