Facebook Firing: The Labor Board Weighs In

Insights
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The National Labor Relations Board's General Counsel has issued a complaint against a Connecticut ambulance service alleging that one of its union-represented emergency medical technicians was unlawfully fired after criticizing her supervisor on Facebook. The complaint also alleges, among other things, that the company's blogging and Internet policy "interferes with, restrains, and coerces" employees in the exercise of their rights under the National Labor Relations Act. An administrative law judge is scheduled to hear the complaint in January.

What's Really Going On Here?
The Board recently issued a press release announcing the complaint. In it, the Board explained that the employee posted harsh and negative comments about her supervisor on the employee's personal Facebook page after her supervisor addressed a customer complaint with her. This prompted the employee's Facebook "friends" (some of whom were co-workers) to post inquisitive and supportive replies. The postings got back to the company, and it ultimately terminated the employee after a thorough investigation had been completed into the Facebook postings and multiple other, more serious issues.

While this marks the Board's first reported charge against an employer for firing an employee who complains about a supervisor on Facebook, it is not the Board's first attempt to protect employee speech through electronic media. The Board has previously held that employees have the right to engage in free speech as a form of "concerted activity" for their "mutual aid or benefit" through website postings and emails. But employees are generally not protected when their speech is clearly personal in nature and is disloyal, reckless, or malicious.

What Happens Next
Although the Board is not advancing a novel theory of liability, the tremendous attention that social networking websites such as Facebook have received in recent years makes this case stand out. Comparing Facebook postings to talk around the company water cooler is not particularly appropriate given that water cooler talk typically only reaches a few people – all of whom are employees. Facebook on the other hand has over 400 million subscribers worldwide.

Given the current political makeup of the Board, the complaint serves as a strong reminder that employers should proceed cautiously before disciplining or discharging employees for expressing criticism over the Internet. Because of the recent advent of this type of communications, many

employers still do not have social media policies. If your company has a social media policy, you should carefully review it to ensure that it meets your company's needs while not unnecessarily curtailing protected employee speech. If your company does not have a policy you should consider developing one.

Finally, be aware that both unionized and non-unionized employees have rights under the National Labor Relations Act, and firing a non-union employee for engaging in protected conduct violates the Act just the same.

If you would like help or advice concerning your company's social media policy, please contact your regular Fisher Phillips attorney.

This Legal Alert provides general information about a specific case. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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