

Onboarding of Social Media

New Hire Orientation:

Is Your Social Media Policy NLRB Compliant?

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Part 1 of 3

Companies can easily open themselves up to labor and employment suits in their social media policies. Ensuring that these policies meet NLRB guidelines is of utmost importance.



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GUIDANCE FROM THE NLRB ON SOCIAL MEDIA POLICIES

The National Labor Relations Board

On January 24, 2012, the National Labor Relations Board Acting General Counsel Lafe Solomon released the second of two reports describing social media cases reviewed by his office. The first report was issued on August 18, 2011. Both reports are intended to provide guidance to human resource professionals.

According to the Acting General Counsel, the reports underscore two main points regarding social media policies:

1. Employer policies should not be so sweeping that they prohibit the kinds of activity protected by federal labor law, such as the discussion of wages or working conditions among employees.
2. An employee's comments on social media are generally not protected if they are mere gripes not made in relation to group activity among employees.

Non-Disparagement Policy

In one case described in the January 2012 report, an employer was held to have unlawfully discharged an employee for posting negative comments on Facebook about the employer's decision to transfer her to a less lucrative position within the company. Co-workers who were Facebook "friends" with the employee made additional comments expressing their frustration with the employer, and one co-worker even suggested the filing of a class action lawsuit.

The employer was held to have unlawfully discharged an employee.



STATING THE CASE

The next day, the employer terminated the employee because the Facebook post violated the employer's non-disparagement policy. In reviewing the employment decision, the Board found that the employer's non-disparagement policy was so broad that it prohibited legally protected speech/activity regarding work place problems. Consequently, the Board found that the termination of the employee under such an overly broad policy was unlawful.

Ambiguous Language

In another case, a company terminated an employee for Facebook postings expressing frustration over an interaction with a supervisor. The Board found that it was not improper for the company to discharge the employee for Facebook postings that were "merely an expression of an individual gripe."

Ambiguous policy language failed to define appropriate conduct.

However, the Board found that the company's social media policy prohibiting employees from identifying themselves as company employees unless discussing terms and conditions of employment in an "appropriate" manner was ambiguous for failing to either define or give examples of "appropriate" conduct, or to limit the policy to exclude legally protected speech/conduct.



YOUR BUSINESS IMPACT

The following information is provided as a general guideline and should not be taken as legal advice or counsel.

These cases highlight the importance not only of having a social media policy that clearly expresses what type of activity will and will not be allowed, but making sure that the policy is carefully crafted so that it is neither overly broad or ambiguous.

If you haven't reviewed your social media policy lately, it might be a good idea to go over it again to ensure that you meet the NLRB's guidelines. In general, social media policies should not:

- ❖ Cause employees to refrain from exercising their protected rights
- ❖ Hinder an employee's exercise of those rights
- ❖ Apply in any manner that restricts the exercise of those rights
- ❖ Control union activity in any way

With the increase in legal action implicating social media policies, it is more important than ever for companies to review them to determine compliance.



ABOUT THE AUTHOR



Katherine D. Hoke

Because of Katherine D. Hoke's 24 years of legal experience representing businesses in various litigation matters and disputes, she has the unique talent for understanding the ultimate goals of a business. Rather than simply responding to the typical process of legal procedures, she leads SLG's traditional legal services team as a partner in handling client legal activities. Ms. Hoke counsels clients on matters involving contract disputes, complex commercial and real estate litigation, and creditors' rights and collections.