

NLRB Social Media Status Update: Is the Board Sending Employers a Friend Request'

September 7, 2011 Matthew Deffebach

PRACTICES Labor and Employment

Since the famous “Facebook firing” complaint in late 2010, many observers have worried that the majority-Democrat National Labor Relations Board’s (“NLRB” or the “Board”) social media focus was an attempt to establish pro-union, anti-employer precedent, giving employees free rein to disparage and criticize their employers online. However, both the Board’s acting General Counsel and the Division of Advice recently expressed views on this issue to suggest that these initial fears may have been overblown.

Background: The “Facebook Firing” and other Board Complaints

The Board has addressed social media issues over the past few years,¹ but its complaint in *American Medical Response of Connecticut*, issued in October 2010, marked the inception of a trend in which the Board and its acting General Counsel, Lafe Solomon, enhanced their focus on these issues.² In *AMR Connecticut*, the complaint alleged that the employer ambulance service unlawfully terminated an employee for criticizing her supervisor on Facebook by referring to her supervisor as a “scumbag” and a “17” (the employer’s internal code for a psychiatric patient). The complaint characterized these postings as protected concerted activity under Section 7 of the National Labor Relations Act (“NLRA” or the “Act”), which protects employees’ rights to engage in concerted activity to bargain collectively and to engage in other mutual aid or protection. The complaint further alleged that the employer had implemented an overly broad blogging and internet posting policy.

The employer in *AMR Connecticut* reached a settlement with the Board in February 2011, agreeing to revise its policies. Thereafter, in May of this year, the Board issued two social media related complaints against non-union employers in *Hispanics United of Buffalo, Inc.* and *Knausz BMW*.

Recent Clarifications

A recent report from the acting General Counsel’s office and several recent memoranda from the Division of Advice should allay much of the uncertainty surrounding the Board’s focus on social media and the previous complaints referenced above.³

This alert outlines recent clarifications and provides recommendations for employers. To continue reading, please click on the PDF linked below.

[PDF - NLRB Social Media Status Update.pdf](#)

For more information, please contact one of the Haynes Boone lawyers listed below. Also, we encourage you to take a look at our new [Social Media Practice](#), a cross-sectional group comprised of more than 40 attorneys.

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¹ See, e.g., *Sears Holding (Roebucks)*, NLRB Div. of Advice No. 18-CA-19081 (released Dec. 4, 2009).

² NLRB No. 34-CA-12576 (complaint issued 10/27/2010).

³ The General Counsel, acting independently from the Board, investigates and prosecutes unfair labor practice charges, and supervises NLRB field offices. This prosecutorial discretion affords the General Counsel significant influence on the direction of labor law, making his report especially significant.