

Labor and Employment Law Information Memo

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TERMINATION OF EMPLOYEE FOR FACEBOOK POSTINGS RESULTS IN NLRB COMPLAINT

The National Labor Relations Board ("NLRB") recently filed a complaint against American Medical Response of Connecticut, Inc. ("AMR"), alleging that AMR violated the National Labor Relations Act ("NLRA") by discharging an employee for posting comments on her Facebook page that were critical of her supervisor. In addition, the NLRB's complaint alleges that AMR's social networking policy constituted an unlawful restriction on employees' rights to communicate with one another about their terms and conditions of employment and otherwise engage in protected concerted activity under the NLRA. A hearing before an Administrative Law Judge is scheduled with respect to the NLRB's allegations on January 25, 2011.

AMR's Employee Handbook included a Blogging and Internet Posting Policy that prohibited employees from: (1) posting pictures of themselves which depict AMR in any way unless written approval from the Vice President of Corporate Communications is granted; and (2) making "disparaging, discriminatory, or defamatory comments when discussing the Company or the employee's superiors, co-workers and/or competitors." According to the NLRB complaint, an AMR employee named Dawnmarie Souza ("Ms. Souza") "engaged in concerted activities with other employees" on November 8, 2009, by criticizing her supervisor on her Facebook page. According to a press release issued by the NLRB that accompanied its filing of the complaint, Ms. Souza's criticism of her supervisor drew supportive responses from her co-workers, which resulted in Ms. Souza making additional negative comments about her supervisor on her Facebook page. Ms. Souza was discharged from her employment with AMR on or about December 1, 2009.

In the complaint, the NLRB alleges that AMR interfered with, restrained, and coerced its employees in the exercise of their right to engage in protected concerted activities, by promulgating its Blogging and Internet Posting Policy and by discharging Ms. Souza. The NLRB also alleges that AMR discriminated against Ms. Souza for her protected concerted activity by discharging her. According to the NLRB's press release, the NLRB is taking the position that AMR's Blogging and Internet Posting Policy contains unlawful provisions, including: (1) the provision that prohibits employees from making disparaging remarks about AMR or supervisors of AMR; and (2) the provision that prohibits employees from depicting AMR in any way without permission.

The NLRB's position regarding the unlawfulness of AMR's social networking policy appears to signify a departure from a recent opinion issued by the NLRB General Counsel's Division of Advice on December 4, 2009. In that opinion, the Division of Advice considered an employer's social networking policy that prohibited, among other things, "disparagement of company's or competitors' products, services, executive leadership, employees, strategy, and business prospects." The Division of Advice concluded that the policy, as written, was lawful because employees could not reasonably construe the policy as prohibiting the types of concerted activities protected by the NLRA. The Division of Advice also found no evidence that the policy was promulgated in response to union organizing activity or was applied for the purpose of discouraging union organizing activity.

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Although a hearing has not yet been held in the AMR case and a decision has not yet been rendered, the issuance of a complaint in that case indicates that the NLRB will closely scrutinize employer policies that potentially restrict an employee's right to discuss terms and conditions of employment through social networking sites. Accordingly, all employers (regardless of whether their employees are unionized or not) should take this opportunity to review their social networking policies, and amend those policies to ensure that there is no language that could reasonably be construed by employees as prohibiting concerted activities relating to terms and conditions of employment. Employers who are contemplating the promulgation of a social networking policy should make sure to craft the language of the policy carefully to reduce the risk that the NLRB will find the policy to be an unlawful restriction on employee rights.

**If you need any advice or assistance creating a social networking policy
or amending your existing policy, please contact:**

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