

PUBLICATION

NLRB Attempting To Limit Employer Policies That Restrict Online Activity

November 10, 2010

Union and nonunion employers alike should be aware of a recent effort by the National Labor Relations Board (NLRB) to attack an employer's social media and conduct policies. The NLRB recently issued a complaint against a Connecticut ambulance service for terminating an employee who posted disparaging remarks about her supervisor. The employee violated the company's policies prohibiting employees from posting online "disparaging, discriminatory or defamatory comments when discussing the Company or the employee's superiors, co-workers and/or competitors." The employee also violated the company's standards of conduct, which prohibited "[r]ude or discourteous behavior to a client or coworker" and "[u]se of language or action that is inappropriate in the workplace whether racial, sexual or of a general offensive nature." These are standard policies that are found in many employers' handbooks.

The NLRB claims that the employee was engaging in activity protected by the National Labor Relations Act (NLRA) when she disparaged her supervisor on Facebook, and it also claims that the policies themselves are illegally overbroad. The complaint does not specify exactly what the employee posted on Facebook.

It is important to recognize that this is just an allegation at this point, and once the NLRB process plays out, the policies under attack in this case may not be deemed illegal. However, this case raises two points that should give all employers pause: (1) the NLRB, a branch of the federal government, is spending its time and resources attacking routine social media and conduct policies maintained by most employers, and (2) this case potentially blurs the line between personal gripes that are not protected by the NLRA and employees' protected concerted activity.

Keep this case in mind when revising your social media and employee conduct policies. The eventual impact of this case will apply to all employers, not just those with unions. Next time you consider terminating an employee for violating a social media policy, consider calling a Baker Donelson Labor & Employment attorney to help you navigate the potential pitfalls under the NLRA.

For guidance, reach out to your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys, located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.