

PUBLICATION

NLRB Takes On Social Media Policies

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On August 18, 2011, the National Labor Relations Board's (NLRB's) general counsel issued a report detailing the agency's efforts to pursue administrative enforcement actions against employers with overly broad social media policies. The report also details unfair labor practice allegations where employees engaged in protected concerted activities in online social media forums. This topic affects both unionized and union-free employers.

Based on the report, the NLRB's general counsel found many prohibitions in employers' social media policies to be unlawfully over-broad because they deter employees from engaging in protected concerted activity online. Some examples of these provisions that were found to be unlawful include prohibitions on: "disparaging remarks when discussing the company or supervisors;" "offensive conduct;" "rude or discourteous behavior;" "inappropriate discussions;" "using any social media that may violate, compromise or disregard the rights and reasonable expectations as to privacy or confidentiality of any person or entity;" "communication or post that constitutes embarrassment, harassment, or defamation;" "statements that lack truthfulness or that might damage the reputation or goodwill" of the company; "posting anything that [the employees] would not want their supervisor to see or would put their job in jeopardy;" "use of the employer's logos and photographs of the employer's store, brand or product without written authorization."

The report also details cases where the NLRB has pursued unfair labor practice allegations against employers who have terminated employees for engaging in protected concerted activity online. The online commentary that the NLRB has sought to protect includes examples that many employers would find to be disparaging, profane and disloyal.

Given the NLRB's position, employers should consider obtaining legal advice to carefully craft their social media policies and apply those policies in a manner that does not run afoul of the NLRA.

If you have any questions on how this or any other NLRB position may affect you, please feel free to 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.