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Think You Can Fire Employees Based Upon Their Facebook Comments? Think Again...

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In the most recent chapter on social media and the law, the National Labor Relations Board ("NLRB") recently filed a complaint against American Medical Response of Connecticut, Inc. ("AMR" or the "Company"), claiming that the Company violated federal labor law when it disciplined and then terminated an employee who posted disparaging remarks about her supervisor on her Facebook page.

In In re American Medical Response of Connecticut, Inc., Case No. 34-CA-12576 (October 27, 2010), the NLRB filed an unfair labor practice charge against AMR, asserting that the Company's suspension and termination of an employee who posted disparaging comments about her supervisor violated Section 7 of the National Labor Relations Act ("NLRA"), which protects unionized and non-unionized employees' rights to "engage in concerted activity." According to the Complaint, the employee requested union representation in response to a performance critique and the supervisor then allegedly threatened the employee with discipline. Later that day, the employee posted disparaging remarks on her Facebook page about her supervisor from the employee's home computer.

According to the Complaint, AMR suspended and then terminated the employee because she allegedly violated the Company's social media and internet policies by disparaging her supervisor on Facebook. The Complaint alleges that the Company's social media policies were too broad because they interfered with employees' rights to communicate with

one another about the terms and conditions of employment and, therefore, violated Section 7 of the NLRA. While this is the first unfair labor practice complaint relating to an employers' social media policies, many do not believe it will be the last.

The message for employers, both union and non-union, is clear. While the law in this area is far from settled, employers should review their social media policies immediately to ensure that they are not broader than necessary and thus susceptible to inviting an unfair labor practice charge or other claim. In addition, employers are well advised to use caution before discharging or disciplining any employee based on activity or comments made by employees on social media sites. As evidenced by the Pietrylo and Stengart cases, about which we recently blogged, disciplinary action related to employees' arguably private use of technology may also lead to claims for, among other things, violation of privacy and violation of applicable wiretapping and stored communications laws.

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