

ALERT

LABOR & EMPLOYMENT LAW

November 2010

NLRB Challenges Termination Over Facebook Post

The Hartford, Conn. regional office of the National Labor Relations Board (NLRB) has filed a complaint alleging that American Medical Response of Connecticut, Inc. illegally terminated an employee who posted negative remarks about her supervisor on her personal Facebook page. In its Nov. 2, 2010 announcement, the NLRB also alleged that the company, an emergency medical care provider, illegally denied union representation to the employee during an investigatory interview.

According to the NLRB, the employee was asked by her supervisor to prepare an investigative report concerning a customer complaint about her work. The employee requested, and was denied, representation from her union. In response, the employee posted a negative remark about her supervisor on her personal Facebook page. The posting was allegedly made later that day from the employee's home computer. According to the NLRB, the posting drew supportive responses from her co-workers, and led to further negative Facebook comments about the supervisor from the employee. As a result of her comments, the employee was suspended and ultimately terminated for violating the company's internet policies. (The company has issued a statement that the termination was based on many other issues as well.)

After an investigation, the NLRB determined the employee's postings constituted "protected concerted activity," i.e., employees acting in concert to address the terms and conditions of their employment, which is protected under the National Labor Relations Act. Moreover, the NLRB opined that the company's blogging and Internet posting policy was unlawful in that it prohibited employees from making disparaging remarks when discussing the company or supervisors. The NLRB also viewed as unlawful a provision prohibiting employees from "depicting the company in any way" over the internet without company permission. According to the NLRB, these provisions "constitute interference with employees in the exercise of their right to engage in protected concerted activity."

Given the novelty of the issues raised, along with the current labor landscape, this is a case to watch closely. Accordingly, employers are advised to proceed with caution when drafting and enforcing internet policies. Adverse action should not be taken against an employee for posting

disparaging comments about the employer on social media sites such as Facebook, Twitter or MySpace, without first consulting with experienced labor counsel. Employers may also want to review their "non-disparagement" rules or, policies in general, since the NLRB's direction on this matter will cover all rules that are viewed as "interference."

To obtain more information, please contact the Barnes & Thornburg Labor and Employment attorney with whom you work, or a leader of the firm's Labor and Employment Law Department in the following offices: Kenneth J. Yerkes, Chair (317) 231-7513; John T.L. Koenig, Atlanta (404) 264-4018; Norma W. Zeitler, Chicago (312) 214-8312; William A. Nolan, Columbus (614) 628-1401; Eric H.J. Stahlhut, Elkhart (574) 296-2524; Mark S. Kittaka, Fort Wayne (260) 425-4616; Michael A. Snapper, Grand Rapids (616) 742-3947; Peter A. Morse, Indianapolis (317) 231-7794; Tina Syring-Petrocchi, Minneapolis (612) 367-8705; Janilyn Brouwer Daub, South Bend (574) 237-1139; and Teresa L. Jakubowski, Washington, D.C. (202) 371-6366. Visit us online at www.btlaw.com/laborandemploymentlaw.

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