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NLRB atypically 'gets it right' in latest ruling on social media

One of the topics from our recent "Eye on Workplace Privacy" seminar was the focus on how the NLRB has been dealing with employer handbook and social media policies. In that segment, we highlighted how the NLRB at times has seemed to go out of its way to find violations by employers of their employees' "Section 7 rights" to join labor unions and to engage in "concerted activity."

However, once in a while, the government can surprise you and reach what may be characterized as the "right result," even in the midst of a host of seemingly bizarre decisions on handbooks and social media rules. In *Landry's Inc*., Case No 32-CA-118213, (June 26, 2014), Administrative Law Judge Gerald Wacknov considered the legality of the employer's social media policy which provided, among other things, that employees should be civil to others in their postings and should not post items on the Internet that could lead to employee morale issues or detrimentally affect the company's business. The ALJ found that the policy when read in its entirety did not forbid employees from engaging in rights protected by the Act, but only urged them to be considerate of others when putting such items on the Internet. Also, the judge interpreted additional provisions of the rule precluding use of the company logo in a manner that infringed on the company's intellectual property rights as simply protecting the company's legal rights concerning its logo, and did not implicate the employees' Section 7 rights.

Although this is only an ALJ decision, and not a ruling by the full Board (which could still reverse the judge on appeal), it is good to know that common sense is still alive and well in some segments of the NLRB.

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