

Facebook Firings: Unexpected trouble with the NLRB over “concerted activity”

You're non-union, so you're safe. No need to worry about unfair labor practice charges. Right? Think again.

Imagine this one. You learn that an employee hopped on Facebook and bad mouthed her supervisor. Other employees joined in and supported her trash talking. You fire the employee. Next thing you know, the National Labor Relations Board (“NLRB”) slaps you with an unfair labor practice charge, investigates the charge and finds that it has merit. Now you're facing a full-on labor hearing before the NLRB's Board.

Yes, that's a reality for a Connecticut-based EMS company. Proud of itself, the NLRB issued [press release](#) on the case.

Non-union employers must keep an eye on labor law. A key provision of the National Labor Relations Act (“NLRA”) applies to employers without unions. All employers, union or not, can be charged with an unfair labor practice if they take an action against an employee for engaging in “concerted activities” for “mutual aid or protection.”

The definition of concerted activities, says the NLRB, is extremely broad. The activity must simply be done by two or more employees, or it must be done by one employee acting on behalf of others. Shoot, the activity doesn't even have to be related to a union or union membership. If your employee tries to initiate or prepare for group action or complaints, the activity may be protected “concerted activity.”

The penalty for losing a “concerted activity” charge can tip the scales on a union campaign at your company. The NLRB may order your company to post a notice of its unfair labor practice ruling where all your employees can see. On top of that, you can be ordered to reinstate a terminated employee with back pay and benefits or take any other action needed to make the employee whole.

Who wants a union waving around an NLRB order like that, right in the middle of a unionization campaign? It makes you sound like you're out to take advantage of your employees.



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[National Labor Relations Act \(NLRA\)](#)

[National Labor Relations Board \(NLRB\)](#)

[Concerted Activity](#)

Here are just a few examples of cases where the NLRB has tagged companies for "concerted activity" charges:

- An employee was fired for copying everyone in the company on an e-mail where he roundly criticized the COO for proposing changes to the vacation policy;
- An employee was disciplined for voicing her disgust with her company's management and its new break policy at a meeting on the new policy; and
- A company punished an employee for breaking an unwritten policy that prohibited all employees from talking about their wages with each other.

Watch your back. Don't unexpectedly give unions an edge in organizing your company. The cost is far too high.

