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LEGAL INFORMATION, NEWS AND COMMENTARY FOR EMPLOYERS

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Settlement reached in lawsuit involving firing over employee's Facebook® comments

As more and more employees take to social media to air their workplace grievances, one recent case shows that employers need to take a close look at the restrictions they place on employee "free speech."

Earlier this month, the National Labor Relations Board reached a settlement with a Connecticut ambulance service in a case involving the termination of an employee who posted negative comments about her supervisor on her Facebook page. The case arose from a complaint issued by the NLRB claiming that her firing violated federal labor law because the employee was engaged in protected activity when she posted the comments about her supervisor and responded to other comments posted by her co-workers.

The complaint further claimed that the employer's policies regarding internet posts, blogging and communications between co-workers was overly broad, and that the company had illegally denied union representation to the employee during an investigative interview.

Prior to the lawsuit being settled, American Medical Response of Connecticut included in its employee handbook a blogging and internet posting policy which, among other things, prohibited its employees from making "disparaging, discriminatory, or defamatory comments when discussing the Company or the employees' superiors, coworkers, and/or competitors." One day, after being told by her supervisor that a customer had complained about her, medical technician Dawnmarie Souza took to the internet to air her grievances. While at home one evening and using her personal home computer, Souza posted on her personal Facebook page entries about her supervisor, comparing him to a psychiatric patient and using two expletives. Co-workers who read Souza's Facebook page added posts supportive of Souza's comments. Souza was subsequently fired.

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The National Labor Relations Act protects the right of employees to discuss the terms and conditions of their employment, including wages, benefits, and management. ***This legal protection applies to unionized and non-unionized employers.*** Taking the position that Souza's comments on her personal Facebook page about her supervisor were protected speech, the National Labor Relations Board filed a complaint against American Medical Response attacking its internet policy and accusing the employer of retaliating against Souza for taking part in a protected activity.

In what was considered an important case involving management's rights to set policies regarding certain employee communications, many employers nationwide were hoping American Medical Response would fight the complaint. However, the day before the hearing, the employer and the NLRB settled the dispute.

While the financial terms of the settlement were not disclosed, the NLRB released a statement saying that "the company agreed to revise its overly-broad rules to ensure that they do not improperly restrict employees from discussing their wages, hours and working conditions with co-workers and others while not at work, and that they would not discipline or discharge employees for engaging in such discussions."

SO WHAT'S AN EMPLOYER TO DO?

So, does this settlement mean all employers should do away with their own blogging and internet policies? No.

It is important to understand what is going on. Like other federal employment agencies, the National Labor Relations Board is expanding the scope of activities it considers as protected and used the American Medical Response case as a way to publicize its stance. Like a lot of instances, the American Medical Response situation turned more on how their policy was applied, rather than how it was written. Here are some suggestions for employers:

- Review your own internet or blogging policy to make sure it is not overly broad.
- Don't put policies in place that broadly prohibit all employee discussions about the company. Policies should focus on prohibiting communications that violate your company's other policies or harms the business, such as discussions about any confidential business information and the like.
- Don't use the policy to discipline an employee for taking part in an activity that is protected, like complaining about discriminatory or unfair treatment.

And finally, with aggressive enforcement by the NLRB on the rise, it's important for all employers – whether unionized or not – to re-familiarize themselves with the protections afforded to employees under the National Labor Relations Act.

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