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More Reasons To Be Careful About Social Media

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As highlighted here previously, social media policies can easily violate federal labor laws. When the National Labor Relations Board filed a complaint against American Medical Response ("AMR") of Connecticut in October 2010 we were all hoping for clarity (at least from the current board). The complaint charged that AMR had illegally terminated an ambulance service employee who posted negative remarks about her supervisor on her personal Facebook page.

The employee did so after being requested by the supervisor to prepare an investigative report regarding a customer complaint about the employee's work. The employee had then asked for and been denied representation from her union, Teamsters Local 443. Later that day, on her home computer, the employee posted the negative remarks about her supervisor on her Facebook page. The employee's comments drew other supportive comments from co-workers and led to more negative comments about the supervisor by the employee. AMR then terminated the employee for her Facebook postings for violating the company's Internet policies. Unfortunately for the rest of us the employer and the board recently settled the dispute, so no opinion will be issuing.

So why did the NLRB question the legality of the AMR social media policy? To answer that question, one must keep in mind that the National Labor Relations Act provides that non-supervisory employees have broad statutory rights to self-expression in the workplace. These rights allow employees to engage with other employees in concerted activities for the purpose of collective bargaining or other mutual aid or protection. In short, the Act prohibits employers from punishing workers – whether union or non-union – from discussing working conditions or unionization. Working conditions include discussions concerning wages and hours of work.

What makes the social media context "concerted" is the nature by which such communications reach out to co-workers by "friending" them and seeking their responses. AMR's Internet policy barred employees from depicting the company "in any way" over the Internet without their permission and further prohibited employees from making disparaging remarks when discussing the company or supervisors. These types of broad Internet and social media policies are fairly commonplace and employers, both public and private, would

be well advised to check their policies to be sure that their rules and regulations do not impermissibly chill the rights of employees.

As we noted previously, what is clear is that employees lose their right to concerted activity if that activity is "egregious." Unfortunately for the rest of us, AMR settled the action with the NLRB, leaving unanswered what the Board will consider the range of egregious conduct to be. The lesson in all of this is the crafting of social medial policies means walking a fine line between managing the workplace while guarding the rights that employees are accorded under federal labor laws. If you need help adjusting your policies to protect your company, please contact a Virginia employment attorney.