Akerman Practice Update

LABOR & EMPLOYMENT

November 2010

Employee's Termination for Facebook Posting Results in Claimed Violation of NLRA

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Employers beware: firing an employee for bad-mouthing the boss on social media may violate the National Labor Relations Act, even for a non-unionized employer.

The National Labor Relations Board just lodged a complaint against a Connecticut ambulance company alleging, among other things, that it unlawfully fired an Emergency Medical Technician for violating a policy that prevented her from depicting the company "in any way" over the internet without the company's permission and from making disparaging remarks when discussing the company or its supervisors. The Board said the employee's exchange of Facebook posts with co-workers constituted protected concerted activity, and firing her for those posts was a violation of the Act. The Board also accused the ambulance company of maintaining and enforcing an overly broad blogging and Internet posting policy that unlawfully infringed on its employees' NLRA rights.

Although it may come as a surprise to some employers, all employees, even those who are not represented by a union, have protected rights under the Act. Section 7 of the Act states, in part, that employees have the right to engage in "concerted activities" for the purpose of "mutual aid or protection." To be protected, the activity must be "concerted," which means that it must be made on behalf of a group of employees, as opposed to an individual. Further, the activity must be for "aid or protection," which means that it must be undertaken

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to benefit or improve the group's employment terms and conditions. The Board takes the position that employees have the absolute right to engage in discussion and complaint regarding the terms and conditions of their employment.

The matter began when the employee posted a negative comment about her boss on her Facebook page using her home computer. The comment was supported by co-workers, which caused the employee to post additional negative comments about her supervisor. When the company discovered these postings, it suspended and later fired the employee under its policies, according to the Board. The Board claims that because the employees were using social media to engage in concerted discussion in order to improve the terms and conditions of their employment, it was protected concerted activity under the Act. Further, the company's policy was overbroad in violation of the Act, because it prohibited conduct that is protected under the Act and unlawfully chilled employees' exercise of their rights.

This lesson for employers: best update your policies to take into account the use of social media and to ensure the restrictions do not run afoul of the NLRA and other applicable law.

For more information, please contact a member of our Labor & Employment practice.

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