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## New NLRB Report Limits Employers' Control Over Social Media Activities



**New report puts strong limits on what employers can include in their social media policies.**

A few months ago, I wrote a post entitled [Social Media and Protected Speech](#) about a surprising ruling made by the National Labor Relations Board (NLRB). Now, there's more. In August, the NLRB released a detailed [report](#) on the outcome of 14 cases involving the use of social media and employers' social media policies. While this is not officially "law," it's probably as close as you are going to get right, as these rulings will certainly be referenced in future decisions.

So, what did it say? Overall, it sounds like the NLRB is simply extending previous rulings to this new medium and wants to protect all employees' rights to "engage in protected concerted activity." And since I'm not an attorney myself, I'm going to use a quote from the [Mashable](#) article to explain further. "Criticism of an employer's practices about wages, hours and working conditions is protected no matter how it is expressed as long as it is 'protected, concerted activity.' 'Protected' is any statement about wages, hours or working conditions. 'Concerted' means the employee's statements were 'engaged in with or on the authority of other employees.' So the statement has to be about working conditions — it can't be a personal attack that is 'so disloyal, reckless or maliciously untrue' that it loses protected status. The statement also has to be directed to other employees or to the company on *behalf* of the employees — not just personal gripes, honking or wailing. But it doesn't matter where or how the employee makes the statement if it is also 'protected' and 'concerted,'" [Heather Bussing](#), an independent employment attorney, explained.

To me, it sounds like it boils down to creating an accurate, clear and well-defined [social media policy](#), but you are limited regarding the types of employee behaviors you can control. Based on this report, you can't limit employees from talking about your firm, other employees or competitors, even if they are posting things you'd rather not see. It is a violation of their right to free speech. Frankly, I'm surprised that you can't include a line in your policy that asks employees not to speak about the company, management or co-workers in a disparaging way, but according to this report, that's the way it is. It does sound like you can forbid sharing things like protected financial information and trade secrets though.



Frankly, I recommend reading the full [report](#) to see if and how your social media policy needs to be amended. Hopefully we all have employees we can trust to not say bad things about our firms in the first place. But to me, it sounds like the days of firing someone for things they have said or done on social media, unless incredibly egregious, are probably over.

Since we have quite a few employment attorneys as readers, what do you have to say about this? Please share your input and chime in.



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