

# LAWFACTS

& opinions

ALERTING MANAGEMENT TO BREAKING LABOR AND EMPLOYMENT LAW DEVELOPMENTS

## *In This Issue*

- NLRB Issues Guidance on Social Media Policies
- 7th Annual Labor Law Forum
- Webinar: Employees Do the Darndest Things!

NO. 128— February 2012

## **NLRB Issues Guidance on Social Media Policies**

**By: Attorneys Douglas P. Seaton and Emily L. Ruhsam**

Since the explosion of Facebook, an employer's right to restrict its employees' use of social media has been a reoccurring hot button topic. Today, nearly every employer has dealt with some Facebook-type concern. As a result, employers must ask the question – what prohibitions can you lawfully place on an employee's use of social media?

Last month, the National Labor Relations Board's ("NLRB") Acting General Counsel issued a report, intended to provide employers with "guidance" on this issue and set forth the following parameters:

Employers may not implement a rule prohibiting employees from "inappropriate postings" or "inappropriate comments" if the policy does not define these terms;

Employers may not discipline an employee for violation of an overly broad social media rule or policy;

Employers may impose rules forbidding postings which are slanderous or detrimental to the company; and

Employers may impose rules prohibiting postings about the company, co-workers, supervisors, customers or clients that violate an employer's non-discrimination and anti-harassment policies.

Unfortunately this "guidance" leaves employers with more questions than answers. Employers need to ensure that their social media policies narrowly define what offenses constitute violations of the social media policy and anticipate possible compliance issues with all federal and state regulatory agencies including the NLRB, EEOC and OFCCP. Until courts review agency case decisions, the rules will remain vague and unclear. In the meantime, before disciplining an employee for a Facebook post or for accessing social media websites at work, employers must review their policies to ensure compliance and minimize risks. Policies that do not contain definitions of prohibited conduct are certain to be found unlawful under the NLRB rules. We advise that employers contact counsel to review these policy materials to be certain they are both defensible and address the company's objectives.

If you have any questions regarding this article or any other employment or labor law question, please contact Doug Seaton or Emily Ruhsam, or any attorney at Seaton, Peters & Revnew at (952) 896-1700



**Seaton | Peters | Revnew**  
*The Lawyers for Employers*

Douglas P. Seaton  
Gregory L. Peters  
Thomas R. Revnew

Tara R. Craft  
Martin D. Kappenman  
Robin N. Kelleher  
Silas F. Mayberry  
Brittany Mayer-Schuler  
Jon S. Olson  
Emily L. Ruhsam  
Corie J. Tarara

Robert L. Grossman,  
of counsel

7300 Metro Blvd, #500  
Minneapolis, MN 55439  
Tel 952.896.1700  
Fax 952.896.1704  
www.seatonlaw.com

The Upper Midwest's premier  
management labor and  
employment law firm

Seaton, Peters & Revnew, P.A. is the Upper Midwest member of Worklaw® Network, the management labor and employment law firm consortium of more than 25 firms throughout the U.S., Canada and Europe.

**worklaw® network.**

## **Payroll Tax Cut and Unemployment Benefits Extension**

On February 17, Congress passed the “Middle Class Tax Relief and Jobs Creation Act” of 2012 (“Act”), extending the 2% payroll tax cut through December 31, 2012. This cut is an extension of the Temporary Payroll Tax Cut Continuation Act of 2011, representing a reduction of an employee’s Social Security tax withholding rate from 6.2% to 4.2% for the first \$110,100 of wages paid. The Act also gradually reduces the number of weeks applicants are eligible for unemployment benefits during 2012. By the end of 2012, in states with low unemployment rates, such as Minnesota, the maximum number of weeks of unemployment benefits will decrease from 79 to 63.

If you have any questions regarding this or any other employment or labor law question, please contact Doug Seaton or Emily Ruhsam, or any attorney at Seaton, Peters & Revnew at (952) 896-1700.

### **7th Annual Upper Midwest LABOR LAW FORUM For HR and Labor Relations Professionals**

**Thursday, March 8, 2012**

**Check in begins at 7:30 AM**

**8:15 AM—4:30 PM**

**Doubletree by Hilton, Bloomington  
7800 Normandale Blvd**

**\$295 per attendee**

**Complimentary Continental Breakfast and Lunch**

**For agenda and highlights of the program and to register, please go to [www.seatonlaw.com](http://www.seatonlaw.com), click on “Training & Seminars” and follow the links to the Labor Law Forum information and registration.**

**Call us at 952-896-1700 if questions.**

**Program has been approved for 6.5 Minnesota and  
7.5 Wisconsin CLE credits.**



"The use of this seal is not an endorsement by the HR Certification Institute of the quality of the program. It means that this program has met the HR Certification Institute's criteria to be pre-approved for recertification credit."

### **Webinar:**

**Employees Do the Darndest Things!**

**Thursday, April 12**

**12:00 p.m. - 1:00 p.m.**

Join Seaton, Peters & Revnew attorneys Doug Seaton and Emily Ruhsam for a discussion about some of the things employees do that leave employers scratching their heads (and some of the legal headaches that follow!). During the webinar, we will discuss the impact employees actions or behavior have on employer liability under workers compensation, OSHA, discrimination and harassment laws, FMLA/ADA leave laws, third-party liability created by employees as well as violations of the duty of loyalty to the employer. This discussion is designed for owners, senior managers, human resources and labor relations professionals wanting comic relief over the lunch hour and practical take-aways for how to better prepare for and handle the next bizarre employee relations issue.

[HRCI credit applied for]

This webinar is free to anyone currently receiving our LawFacts. Space is limited! To sign up, please visit our website at <http://www.seatonlaw.com/training/index.shtml>. If you have any questions please call us at (952) 896-1700.

If you are receiving this LawFacts, you or another member of your organization is a client, a member of one of the trade associations or chambers of which we are also members, or have requested a subscription to this newsletter. If you'd rather receive our LawFacts by e-mail, or if you no longer wish to receive it, please e-mail us at [firm@seatonlaw.com](mailto:firm@seatonlaw.com) or call toll-free at 800-268-5008.

This communication is intended for general informational purposes only and is not intended to constitute legal advice with respect to any individual facts or circumstances. You are urged to consult with one of our attorneys regarding your own situation and your specific question. We would be happy to help. SEATON, PETERS & REVNEW, P.A. 2012