



## Tips to Prevent Facebook Foibles

Ronald J. Andrykovitch - 5/13/11

Facebook has become the water cooler of the 21st century as co-workers engage in small talk, proudly display photos of their children and discuss working conditions on the social networking site.

This can create challenges for employers as negative or inflammatory comments relayed via social media have the potential to create more of an impact to business than face-to-face interaction. The challenge for employers is to exercise their right to regulate disruptive behavior without violating the rights of workers under the National Labor Relations Act (NLRA).

Here are some tips to help employers deal with or, ideally, prevent fallout related to social networking or electronic communications.

**Don't Create an Overly Broad Policy.** A recent case involving a Connecticut ambulance service employee is a groundbreaking precedent involving workers and social media. The employee was discharged for posting negative comments about a supervisor on Facebook. This is the first instance in which the National Labor Relations Board intervened to defend a worker's criticism of his or her supervisor or company on a social networking site.

The employee was accused of violating a policy that bars employees from depicting the company "in any way" on Facebook or other social media sites. According to the board, the phrase "in any way" is overly broad and violated the worker's right to discuss working conditions with fellow employees.

**Craft a Strategic Policy.** It's important for employers to have a policy that addresses the use of electronic communications by workers – including emailing, blogging and social networking. Businesses have the right to restrict communication of a harassing nature and speech that is disruptive. They also have the right to restrict speech that is false or disloyal.

The policy should address limitations on email to work-related matters and restrictions on the use of social media during work time. These rules are intended to ensure that electronic communication does not interfere with work processes.

**Be Mindful of NLRA Regulations.** Key language in the NLRA that employers must consider appears in Section 7, and includes the following statement: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

This section not only provides protection for union employees, but also for those who are not affiliated with a labor group. Employers cannot over-broadly restrict “concerted activities” among employees discussing working conditions. Concerted activities refers to communication among two or more employees or a statement made by one employee on behalf of others.

Any policy regarding electronic communication should address disruptive behavior and outline disciplinary action without over-broadly restricting workers’ rights to discuss wages, working conditions and unionization.

**Be Consistent When Enforcing Rules.** Once a solid policy is in place, employers must uniformly enforce the rules. Do not wait for a union grievance or a lawsuit to surface to avoid claims of discriminatory enforcement.

Policies should be republished from time to time, and management trained to stand behind the rules and enforce them without prejudice.

**Remain Proactive.** Before social networking, negative commentary about supervisors and business practices was easier to control, but now employees have the opportunity to air grievances to the world with the touch of a button.

Supervisor training is vital to ensuring that issues are diffused before they become Internet fodder. Management should be encouraged to get in front of employees for face time, and remain proactive so areas of disagreement do not come to light in negative ways.

Regular meetings give employees the opportunity to raise concerns, and complaint procedures should be in place to ensure that employees have an outlet for bringing issues to light internally.

There will always be a fine line between the responsibility of companies to restrict unruly behavior and the rights of workers to voice criticism of working conditions. But with an electronic communications policy based on NLRA case law as well as proactive and responsive management strategies, organizations can avoid the negative implications of social networking.

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