



LABOR AND EMPLOYMENT BRIEF

NLRB FINDS FOR EMPLOYER IN FIRST FACEBOOK FIRING CASE

Employers find themselves in uncharted territory when it comes to responding to social media activity by their employees, particularly in the wake of a series of reports issued by the National Labor Relations Board acting general counsel. But on September 28, 2012, in the Board's first decision involving a discharge for Facebook postings, the NLRB found that an Illinois BMW dealership did not violate the National Labor Relations Act when it fired a salesman for photos and comments posted to his personal Facebook page. The employee's posts concerned two incidents that occurred on the same day.

As an initial matter, the Administrative Law Judge had to decide which of the two postings triggered the termination. The ALJ found that one posting – which included photos and sarcastic comments about the dealership serving hot dogs, chips, and bottled water at a sales event announcing a new BMW model – might have been protected activity under the NLRA. But, the ALJ found (and the NLRB agreed) that the salesman was fired solely for his other posting – which included photos of a Land Rover accidentally driven over a wall and into a pond at an adjacent dealership owned by the same employer, along with sarcastic commentary. The NLRB found that the Land Rover photos and comments were not concerted or protected activity under the NLRA because they were posted solely by the employee and had no connection to any of the employees' terms and conditions of employment.

However, employers should also note that the Board's decision also included a finding that the dealership's "courtesy" rule was unlawful. In particular, the NLRB reasoned that employees would reasonably believe that the policy prohibited any statements of protest or criticism, even those protected by the Act. This component of the decision is consistent with the NLRB's recent trend of invalidating social media policies and finding components of such policies to be overly broad.



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KEAN MILLER EMPLOYMENT LAW FORUM SCHEDULED FOR NOVEMBER 16

The 2012 Employment Forum from Kean Miller will be held on Friday, November 16th at the White Oak Conference Center in Baton Rouge from 7:30 am to 1:15 pm. The seminar is approved for 3.25 hours of Louisiana CLE credit and meets the HR Certification Institute's criteria for pre-approved recertification credit.

The seminar will feature the following topics:

Jambalaya, Crawfish Pie, and a Smattering of Some Louisiana - Specific Employment Laws: You may know about the ADA, the FLSA, OSHA, but in this presentation, Ed Hardin and David Whitaker will guide you through the bayous of some Louisiana specific employment laws such as laws relative to leave, gun rights, and non-compete agreements. Presented by A. Edward Hardin, Jr. and David M. Whitaker.

Taking Steps to Decrease Risks During the Termination Process: As most human resources professionals know, one of the hardest parts of the job is involuntarily terminating an employee. Moreover, a termination could lead to a lawsuit for your company. This presentation will demonstrate the proper process for terminating an employee, what documentation is necessary, and how these efforts can decrease the terminated employee's chance for prevailing in a lawsuit against your company. Presented by Scott D. Huffstetler.

Post, Like, Tweet, and Status Updates: A Game Plan for Anticipating, Defending, and Tackling Social Media: Tweets, Facebook, Like/Don't Like... Today employers face a myriad of evolving social media issues. Anticipating potential issues, and making sure policies are in place, are critical to handling issues of employee discipline for social media activity both during and after work time. Employers face additional issues when implementing a company Facebook page, as well as when using social media as a recruiting or screening tool. This presentation will highlight recent social media issues facing employers and discuss policies and practices an employer can implement to tackle social media issues in the workplace. Presented by Erin L. Kilgore.

Sabotaged From Within: No employee would ever leave your fabulous business, right? However, when reality sets in that your trusted "right hand" manager has departed and set up a competing business, what legal issues arise? We will consider proactive steps to take to protect the business and prepare for the potential departure. We will consider circumstances when the new competitor may cross the "fairness line." Presented by James R. "Sonny" Chastain Jr.

Friday, November 16, 2012, 7:30 am - 1:15 pm

White Oak Conference Center

17660 George O'Neal Road, Baton Rouge, LA 70817

Seating is limited. RSVP by November 12th to Brittney Peraino at 225.382.4624 or rsvp@keanmiller.com

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