

Posts on Employer's Blog and Employee's Facebook Account May Make Employer Liable for Retaliation

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The U.S. District Court for the Middle District of Tennessee recently allowed the retaliation claims of two former employees at Coyote Ugly, a chain of concept saloons, to continue, denying Coyote Ugly's bid to dismiss the claims. The employees were both part of a lawsuit against Coyote Ugly alleging violations of the Fair Labor Standards Act ("FLSA"). A month after the FLSA action was filed, the president and founder of Coyote Ugly posted an entry on her blog, available on the Coyote Ugly website. In the blog entry, the president mentioned the lawsuit, alleged that one of the employees, unnamed on the blog, was fired for theft and added "f*** that b****." Separately, a supervisor, aware that the other employee was also part of the lawsuit, made a post to his Facebook page stating "Dear God, please don't let me kill the girl that is suing me . . . that is all . . ." while allegedly sitting across the bar from the other employee. Later that same night, the supervisor was told a customer had fallen and threatened to sue the company. The supervisor stated, "Why does everyone sue? I'm tired of all of these b***** taking their issues out on our company. They're f***ing idiots." Although the supervisor was facing another individual, his body was allegedly turned towards the employee, who was approximately two feet away, while he made this statement. In addition to denying the defendant's motion for summary judgment on the underlying FLSA claims, the court found that the blog post, Facebook post and supervisor outburst could support the employees' claims for retaliation for engaging in protected activity under the FLSA and denied the defendants' motion for summary judgment.

TIP: Employers should refrain from posting negative remarks about employees on social media, as social media comments may form the basis of retaliation, defamation or other employee claims.

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