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BLOG

NLRB Invalidates Several Employers' Social Media Policies

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As we recently reported, the National Labor Relations Board (NLRB) and its administrative law judges have issued decisions striking down several workplace social media policies, creating uncertainty as to what social media activities employers may lawfully regulate or prohibit. In one such case, an administrative law judge for the NLRB held that an employer's policy prohibiting employees from making "disparaging or defamatory comments" about the employer on social media websites was overbroad and unlawful. The administrative law judge found that a reasonable employee would likely believe that the policy prohibited activity protected under the National Labor Relations Act, which allows employees to engage in concerted activities for their mutual aid or protection, and would unlawfully chill permissible employee activities. The administrative law judge also held that the policy's "savings clause," stating that the policy should be interpreted as comporting with the law, did not prevent the policy from being overbroad and invalid. In a similar decision on September 7, the NLRB itself issued its first decision regarding social media policies, striking down an employer's policy. The policy prohibited employees from posting statements on social media that damaged the reputation of the employer or any individual. The NLRB found that employees could reasonably believe that the rule prohibited activity protected under the Act, reversing an administrative law judge's decision. The NLRB noted that the rule did not contain any language that would limit its application to activities or statements not protected by the Act.

Tip: Although employers may have a legitimate interest in limiting the social media activities of their employees, employers should review their social media policies with the assistance of counsel in order to determine whether any changes to those policies should be made in light of the NLRB's recent decisions.

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