

NLRB Affirms Facebook Firings Violated Law, Rejecting Employer's Conspiracy Argument

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The National Labor Relations Board recently affirmed an administrative law judge's findings that Design Technology Group, doing business as Bettie Page Clothing, illegally fired three workers who discussed workplace complaints on Facebook. The three employees were all salespeople who worked at the employer's wholesale and retail clothing company. Two of the employees discussed work-related complaints in person, including complaining about their manager's treatment of employees. One of them also complained to the company's owner that employees had safety concerns about leaving the store –in a reputedly unsafe area- when it closed at night. The manager became upset when she learned that one of the employees had spoken to the company's owner. The three employees discussed the situation on Facebook later that night, and one noted that the company was violating various labor laws. An uninvolved employee informed the manager about the Facebook comments. The manager then fired two of the employees approximately one week after the comments were posted, and the third a month later. The NLRB upheld the administrative law judge's findings that the Facebook communications were protected activity under the National Labor Relations Act. The employer argued that the Facebook posts were not protected because the employees did not believe that their conduct was for mutual aid or protection, but were attempting to entrap the employer into firing them. The NLRB noted that an employee's motive, even if selfish, does not deprive the worker of the right to engage in protected activity. The NLRB ordered the employer to reinstate the three workers and pay them for lost wages.

TIP: Employers should consult with counsel before terminating employees based on social media posts, as the NLRB has consistently held that social media communications can constitute protected activity.

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