

National Labor Relations Board Orders Reinstatement of Workers Fired for Facebook Comments

JANUARY 2, 2013

Recently, the National Labor Relations Board affirmed the decision of an administrative law judge holding that an employer violated the National Labor Relations Act when it fired five workers for comments made on Facebook. The NLRB found that the employees, who believed a co-worker was going to bring certain concerns to management, were engaged in protected concerted activity because they were acting as a group to defend themselves against the co-worker's accusations. The employer argued that the employees were fired because the Facebook comments violated its zero tolerance policy against bullying and harassment, but the NLRB held that the comments were not harassment within the meaning of the policy. Additionally, the NLRB found that the policy had to be applied with reference to the Act and employees could not be disciplined for protected activity simply because of another employee's subjective reaction to the activity. Because the firings violated the Act, the NLRB upheld the judge's recommended order that the workers be reinstated.

TIP: Employers should consider consulting legal counsel before terminating employees based on social media activity, as some employee social media activity may be protected under the National Labor Relations Act or other laws.

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