

NLRB Says Firing for Facebook Comment Not Illegal

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The National Labor Relations Board's Division of Advice recently released a [memorandum](#) finding that an employer did not violate the National Labor Relations Act when it fired an employee for making negative comments on Facebook, because the comments were "individual gripe[s]" and not protected activity under the Act. The employee, along with nine other current or former co-workers, participated in a group message on Facebook. The employee mentioned an interaction with a supervisor and then stated "They [the employer] are full of sh**...FIRE ME...Make my day..." No other current employees participated in this part of the conversation. Later, one of the employee's co-workers stated "it's getting bad there [at the workplace], it's just annoying as hell. It's always some dumb sh** going on." The employee did not respond to that portion of the co-worker's statement. One of the other participants in the group message showed it to the employer, who terminated the employee who made the comments, saying it was "obvious" that she was no longer interested in working for the employer. The Division of Advice memorandum found that the Facebook messages were not concerted activity, as they did not reference shared employee concerns over workplace conditions but reflected an individual's personal feelings about a supervisor. Additionally, the employee's co-workers did not view the comments as an expression of shared concerns, and there was no discussion of any group action. The memorandum, signed by Assistant General Counsel Barry J. Kearney, recommended that the employee's charge against the employer be dismissed.

TIP: Not all social media posts are protected by the National Labor Relations Act. However, employers should consult with counsel before terminating or disciplining employees for social media activity and before issuing social media policies.

This tip has been created for information and planning purposes. They are not intended to be, nor should they be substituted for, legal advice, which turns on specific facts.

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