

NLRB General Counsel's Office Issues Four Advice Memoranda Providing Guidance on Social Media Policies

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Recently, the Division of Advice at the Office of the General Counsel of the National Labor Relations Board (NLRB) released four [advice memoranda](#) discussing electronic communication and social media policies. In *Alpine Access, Inc.*, the Acting General Counsel reiterated its position that the NLRB's current precedent regarding email policies, employees' right to engage in protected activity under the National Labor Relations Act using employer communications systems, and discriminatory policies was wrongly decided. The Acting General Counsel argued that where employees work remotely and cannot communicate with each other except by using the employer's electronic communication system, they presumptively have the right to use the system for organizing activities, subject to the employer's need to maintain production and discipline. In *Price Edwards & Co.*, an employer violated the Act by prohibiting an employee from accessing Facebook at work, even though the employee's Facebook posts were ultimately found not to be concerted activity. The employer's policies prohibiting salary information from being communicated via email and "inflammatory" communications were also unlawful. In *Laboratory Corp. of America*, the employer's policies prohibiting public statements about the employer, disclosure of confidential information, use of the employer's name or logo, posting of "inflammatory" communications and employees identifying themselves as working for the employer without prior authorization and without a statement that they did not speak for the employer were found unlawful. Additionally, a requirement that employees make "professional and "appropriate" comments about the employer violated the Act. However, in *Corning Hospital*, a provision in the employer's social media policy asking employees to "[b]e respectful and professional" to coworkers, business partners, competitors and customers did not violate the Act. Because the policy did not prohibit employee criticism or interfere with employees' rights to discuss working conditions or other protected topics, the advice memorandum concluded that employees would not reasonably construe the provision to restrict the exercise of their rights.

TIP: Employers should be aware that the NLRB has expressed interest in the social media and electronic communication policies of even non-unionized workplaces. Employers should review their current policies with the help of counsel to ensure compliance with NLRB precedent and guidance.

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