NLRB Files Complaint Against Company for Firing Worker Over Facebook Post

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The Hartford Regional office of the National Labor Relations Board (NLRB) recently announced that it will pursue a complaint against American Medical Response of Connecticut, Inc. for allegedly terminating an employee because she posted negative comments about her supervisor on her Facebook page. The NLRB contends that the Facebook posts are protected concerted activity and, therefore, the employee's termination violated the National Labor Relations Act (NLRA). The complaint also alleges that the employer maintained and enforced an overly broad blogging and Internet posting policy.

Background

The case arose when a company supervisor declined an employee's request to have a Teamsters representative present during an investigatory interview. Upset, the employee posted negative comments about the supervisor on her Facebook page. The posts drew supportive responses from her co-workers which, in turn, prompted the employee to post additional disparaging remarks. Once the company discovered the posts, it suspended and later terminated the employee.

The employee then filed a charge with the NLRB. After investigating, the NLRB concluded that the Facebook posts constituted protected concerted activity and that the employer's blogging and Internet policy interfered with the employee's right to engage in protected concerted activity. The company's blogging and Internet posting policy prohibited employees from making "disparaging, discriminatory or defamatory comments" on the Internet about the company, co-workers, or supervisors. The employer denies the allegations, claiming the posts were not concerted protected activity under federal law.

Protected Concerted Activity

Section 7 of the NLRA protects the rights of workers, both union and nonunion, to communicate with each other about wages, hours, and other terms and conditions of employment. The NLRB has held that an employer's policies violate the NLRA if they "reasonably tend to chill employees in the exercise of their Section 7 rights." Even maintaining a policy with such an effect is an unfair labor practice.

Implications for Your Company

The case is scheduled for hearing on January 25, 2011. Until there is a decision, employers – union and nonunion – should review their social media, blogging and Internet policies to ensure they do not unlawfully prohibit employees from exercising Section 7 rights. This case is an important reminder that protected activity may occur in a variety of environments, from the water cooler to cyberspace. Furthermore, employers should use caution when considering disciplinary action for violations of those policies, making sure that an employee's conduct goes beyond that protected by Section 7 before imposing discipline.
