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Another One Bites The Dust

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The NLRB has continued its assault on employer social media policies and a recent Administrative Law Judge ruling from the Board further complicates the issue. The Acting General Counsel, in his various reports on the Board's social media cases, has made it clear that employers need to include disclaimers in their policies that nothing in the policy is meant to interfere with employee Section 7 rights. However, a San Francisco-based ALJ, in a lengthy opinion dealing with the social media policy of G4S Secure Solutions (USA) Inc., struck down that company's social media policy even though it included such a disclaimer.

Specifically, the ALJ found that G4S's policy was overbroad and would chill the exercise of Section 7 rights by employees of the company. G4S's policy stated, "This policy will not be construed or applied in a way that interferes with employees' rights under federal law." The ALJ expressly determined that "it cannot be assumed that lay employees have the knowledge to discern what is federal law, and thus permitted under the disclaimer, as opposed to what is prohibited 'legal matter'." Though the ALJ did not go beyond that, the clear suggestion from the opinion is that a disclaimer of noninterference with Section 7 rights must be far more particular in explaining what types of rights are, in fact, protected under Section 7 and, thus, not prohibited under an employer's social media policy. Of course, most employers are reluctant to spell out in detail in their own policy manuals exactly what types of activity employees may engage in as protected activity under Section 7 of the NLRA.

The judge's ruling also struck down that portion of the company's policy forbidding employees from commenting on work-related legal matters, but allowed a provision that prohibited the posting on social media sites of pictures of employees in their security uniforms.

A full text of the ALJ's ruling in G4S Secure Solutions can be reviewed here.

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