

Update On Social Media Issues With The NLRB

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The National Labor Relations Board (NLRB) recently issued an Advice Memorandum which provides additional guidance for employers faced with disciplining an employee for his or her social networking activity. Our recent Alert on this issue can be [found here](#).

The Board addressed a case where an employee's supervisor invited him to join LinkedIn®. The invitation identified the employer and asked the employee for his job title. Thinking only his supervisor would see, the employee inserted a profane term for his job description.

More than a year later, the employee and some coworkers began discussing the employer's questionable compensation policy, but ultimately decided not to complain to management. Shortly thereafter, in connection with the creation of its own LinkedIn profile, the employer began surveying the LinkedIn profiles of its employees. In doing so, the employer stumbled across the employee's less than flattering job description. Not surprisingly, the employee was terminated for disparaging the company in violation of its Communication Usage policy.

The employee subsequently filed an unfair labor practice charge with the Board arguing that the termination was due to his involvement in the discussions pertaining to the possible wage and hour suit. According to the employee, the temporal proximity between the discussions and his termination suggested an unlawful motive. This was especially true given the fact that the employee's profile had been active for over a year before he was disciplined. The Board's Assistant General Counsel disagreed.

In recommending that the charge be dismissed, the Assistant General Counsel underscored the fact that temporal proximity would not alone establish an unlawful motive. Here, there was no evidence that the employer knew of the employees' discussions (which no doubt amounted to "protected concerted activity"). Additionally, there was no evidence to suggest any sort of animus towards employees discussing their working conditions. Instead, the employer was simply taking action against an employee for an isolated comment that disparaged the Company.

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