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Can You Spy On Your Employees' Private Facebook Group?

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For years, companies have encountered issues stemming from employee communications on social media platforms. When such communications take place in private groups not accessible to anyone except approved members, though, it can be difficult for an employer to know what actually is being said. But can a company try to get intel on what's being communicated in such forums? A recent National Labor Relations Board (NLRB) case shows that, depending on the circumstances, such actions may violate labor law.

At issue in the case was a company that was facing unionizing efforts by its employees. Some employees of the company were members of a private Facebook group and posted comments in the group about potentially forming a union. Management became aware of this activity and repeatedly asked one of its employees who had access to the group to provide management with reports about the comments. The NLRB found this conduct to be unlawful and held: "It is well-settled that an employee commits unlawful surveillance if it acts in a way that is out of the ordinary in order to observe union activity."

This case provides another reminder that specific rules come into play when employees are considering forming a union. Generally, companies cannot:

- Threaten employees based on their union activity
- Interrogate workers about their union activity, sentiments, etc.

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- Make promises to employees to induce them to forgo joining a union
- Engage in surveillance (i.e., spying) on workers' union organizing efforts

The employer's "spying" in this instance ran afoul of these parameters, which can have costly consequences, such as overturned discipline and backpay awards.