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Can You Terminate An Employee For Facebook Posts Criticizing Your Company?

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Disciplining an employee for social media posts criticizing a company can be a tricky area to navigate from a legal standpoint. The National Labor Relations Board (NLRB) has been aggressive in terms of [ordering the reinstatement](#) of workers terminated for posting comments online regarding their terms and conditions of employment, including comments that are critical of their employers. A recent advice memo from the agency shows this remains an area where companies are getting tripped up.

[At issue in the case](#) was an employee who made several comments on Facebook regarding workplace accidents and soliciting input from others, including coworkers, regarding ideas that may improve workplace safety at his place of employment. In his posts, the employee was critical of the company and, in some respects, of his coworkers. When the posts were brought to the company's attention by some employees who felt disrespected by the comments, the employer decided to terminate the employee based on the Facebook comments.

The NLRB determined that the termination was unlawful and found the employee should be reinstated. Section 7 of the National Labor Relations Act (NLRA) vests employees with the right to engage in concerted action for their "mutual aid and protection." Given that statutory right, the board reasoned that the employee's posts on workplace safety at the company constituted "protected activity" under the Section 7 of the NLRA because they were made

for the mutual aid and protection of his coworkers and also were “inherently concerted” (i.e., the nature of the comments alone established he was seeking to protect his fellow coworkers).

This case reminds employers to continue to tread carefully when evaluating whether employee posts on social media can serve as legitimate grounds for employee discipline determinations – even when such comments may be critical of the company. The [NLRB continues to find violations](#) of the NLRA in this context.