

The Viral Spiral: How An Employee's Facebook Post Dragged Her Employer Into A Social Media Controversy

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Instances of deplorable racism have sparked recent protests on the University of Missouri's campus. Not surprisingly, these protests have received a significant amount of media attention. On Nov. 13, 2015, however, the world's attention shifted to the horrific terrorist attacks in Paris. We have since been inundated with 24-hour news coverage on developments related to the war on terror. Following the Paris attacks, the Washington Times released a story explaining how University of Missouri protestors had taken to Twitter to express disappointment with the fact that this tragedy was directing media attention away from their cause.

College student Emily Faz, an employee of Wild Wing Café, apparently found this development unsettling. So what did she do? Faz took to Facebook to disseminate her opinion regarding the Washington Times article. Here is the content of her post: I'm just going to leave this here. I swear if I see this B* at Southern, I'll make you regret even knowing what a movement or a hashtag is, and you'll walk away with your tail tucked. This whole black lives matter movement is misguided and out of hand. Maybe no one likes or takes y'all seriously because no one can see past your egotistical B*****. Some people might just look past it, but fair warning I'm am (sic) not one. All lives matter, that has always been the case, and you are part of the problem if you think other wise (sic).

Faz's controversial post didn't just go viral: [it created a social media firestorm](#). Thousands of individuals took to Facebook and Twitter to condemn Faz's commentary. Despite the criticism, a large number of supporters rushed to Faz's defense. Many supporters claimed Faz was the target of a social media "witch hunt." In their subjective view, Faz had done nothing more than share her opinion on a controversial subject. Nevertheless, she was being made the target of a significant amount of online harassment. The ongoing debate intensified when the Internet turned its attention to Wild Wing Café. The business started receiving messages calling for Faz's termination. The attention also unquestionably disrupted the company's business operations.

What happened next? Rumors started to circulate that Wild Wing Café had terminated Faz's employment. So Faz's supporters took to Twitter to protest the company's decision. The rumor was incorrect. The company did not terminate Faz's employment and ultimately issued a statement to set the story straight. Will Faz remain employed by Wild Wing Café? We don't know. And that is not really the focus of this blog post. The issue we would like employers to focus on is this: A controversial Facebook post sparked a social media frenzy that unquestionably impacted this employer's day-to-day operations.

The Big Picture

Faz's Facebook post provides a vivid example of how an employee's social

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media activity can have a very real impact in the workplace. This raises an important question: What should an employer do if an employee's social media post goes viral and negatively impacts business operations?

Well, for starters, avoid the knee jerk reaction. Take a step back and evaluate the content of the post. For example, does it violate the company's EEO policy? Does it provide evidence of a discriminatory animus? Examining social media content from this angle is critical to making an informed decision.

Additionally, consider whether the National Labor Relations Act (NLRA) will have an impact on your analysis. The NLRA provides some protection to employees engaging in social media activity when the content amounts to "protected concerted activity." This occurs when two or more employees take action for their mutual aid or protection regarding the terms and conditions of employment (e.g., wages, hours, safety, etc.). For example, a social media controversy created by a group of employees complaining about wages may fall within the scope of "protected concerted activity." As such, examining the social media content from this angle is also critical to making an informed decision. Moreover, if an employer is leaning towards termination, evaluate whether the company may be setting itself up for a lawsuit.

For example, has the company allowed controversial posts in the past? Will the employee be able to point to similarly situated individuals who received more favorable treatment? This is yet another angle an employer will have to consider in order to formulate a game plan.

What's the bottom line? It's all about assessing risk. And properly assessing risk will involve a careful analysis of the facts specific to each case. Employers are therefore encouraged to involve outside counsel when navigating this minefield.

One final note: We've repeatedly emphasized that it is critical for employers to monitor what is trending on the Internet. The debate regarding Faz's social media activity only serves to underscore this point. To be sure, keeping up on what is trending probably won't stop a controversial social media post from going viral, but it may provide an employer with more lead time to formulate a game plan. Read related posts: [Trending Now: How the Latest News Going Viral Can Lead to Employment Litigation](#), [Twitter is Going Crazy Over the #InternationalMensDay Hashtag](#), [Employee Suspended for Tweet: What We Can Learn From This Real World Example](#).