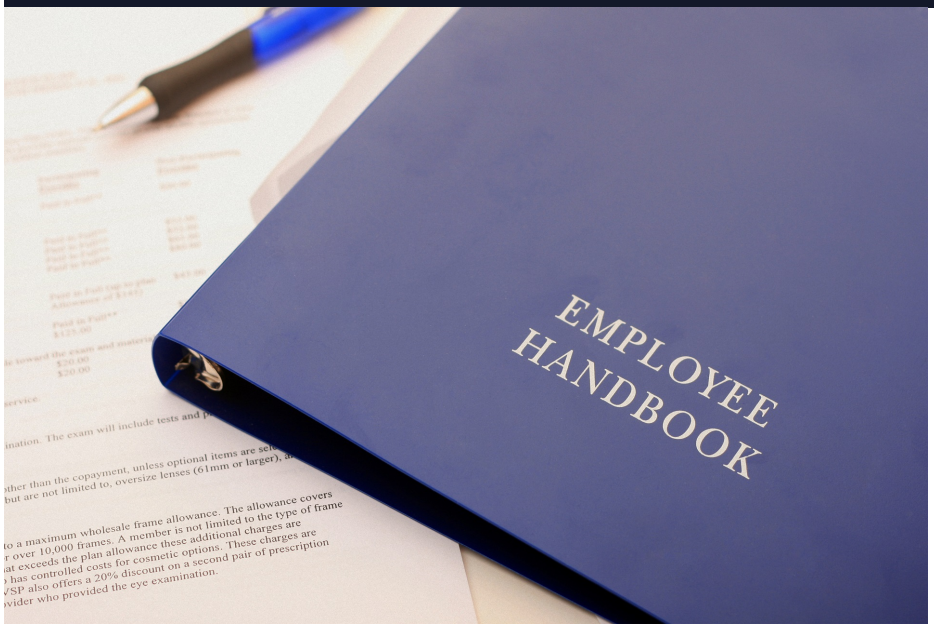

Choose Your Words Carefully When Drafting Social Media Policies

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Employees engage in statutorily-protected activity, Section 7 of the National Labor Relation Act explains, when two or more of them act together to improve the terms and conditions of their employment. Employers are prohibited by the Act from restricting employees from exercising their Section 7 rights.

Employers Can Sometimes Unwittingly Violate Section 7

Say your company is drafting a social media policy and you include a line explaining that employees should not use social media to "disparage" their co-workers because you want to keep your employees from spreading hurtful rumors about one another.

Such a line may violate Section 7 of the Act because your employees could – in theory – interpret this as prohibiting them from discussing the terms and conditions of their employment. For example: two employees might be reluctant to make comments about the higher wages the company pays a third employee because such comments could be perceived as "disparaging" under the social media policy.

So the reasoning goes, and in *Echostar Technologies v. Leigh*, a National Labor Relations Board (NLRB) administrative law judge recently came to that exact conclusion. Echostar's prohibition in its social media policy against the use of "defamatory" language was lawful, the administrative law judge found, but it's prohibition against the use of "disparaging" language was not.

Carefully Drafting Social Media Policies

As social media policies continue to evolve, the NLRB will continue to

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interpret what is – and is not – lawful under Section 7. As a result, employers must remember to choose their words carefully when they draft and revise their social media policies. They must also consider the various ways that the language of their policies could be interpreted by their employees.