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NLRB General Counsel Issues Additional Guidance On Social Media Cases

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NLRB Acting General Counsel Lafe Solomon released a second operations management memorandum yesterday addressing the use of social media by employees and when such use constitutes protected activity under the NLRA. The memo summarized more than a dozen recent social media cases decided by the General Counsel's office and followed a similar report by Solomon in August 2011, which had provided summaries of 14 prior cases reviewed by the General Counsel's office.

There are no real surprises in the cases highlighted in Solomon's most recent memo. Instead, they confirm the two main situations that tend to trip employers up:

> (1.) Overbroad social media policies that can be read to prohibit discussions of wages or working conditions; and
>
> (2.) A termination or other discipline based on an employee's social media post discussing or planning group action about wages or working conditions. (However, these cases do confirm that mere gripes or posts that do not involve issues of group concern for employees should not be seen as protected activity.)

This is an issue that affects unionized and non-unionized employers and it continues to be carefully scrutinized by the Board. (Solomon himself called it a "hot topic" in his memo.) The ubiquitous nature of these cases should be a caution for all employers to ensure they carefully review their social media policies and consider the potential that an offending social media post may be considered protected activity before disciplining an employee.

The NLRB's press release on Solomon's memo is available online here. Our previous coverage of this issue is here.

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