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Uh-Oh: Company's Social Media Policy Ruled Unlawful

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Facebook. Instagram. Twitter. Snapchat. As the list of social media platforms continues to grow and people increasingly choose to use them as communication vehicles, more and more employers are drafting and implementing policies seeking to regulate their employees' posted content and messaging on those sites. A recent National Labor Relations Board (NLRB) [advice memo](#), however, is another reminder that companies – including non-union ones – should keep in mind there are [legal parameters that come into play](#) in this sphere.

At issue in the case was a company's social media policy that prescribed certain expectations for employees on social sites and proscribed various types of statements on such platforms. The board ultimately concluded two provisions in the policy ran afoul of the National Labor Relations Act (NLRA).

The first provision found to be unlawful stated:

"Make sure you are always honest and accurate when posting information or news, and if you make a mistake, correct it quickly. Be open about any previous posts you have altered. Remember that the Internet archives almost everything; therefore, even deleted postings can be searched. Never post any information or rumors that are false about Friendship Ridge, fellow employees, owners, residents, suppliers, people working on behalf of Friendship Ridge."

The NLRB determined this was unlawful because "Board and court precedent

has long recognized that employees have the right to make a wide variety of statements in the context of a labor dispute, including inaccurate statements, as long as those statements do not constitute malicious defamation.” In other words, the proscription here was too broad.

The second provision held to be unlawful provided:

“Maintain the confidentiality of Friendship Ridge private or confidential information. Do not post internal reports, policies, procedures or other internal business related confidential communications.”

This was found to violate the NLRA because “the requirement that employees keep confidential the Employer’s ‘policies, procedures’ would reasonably be interpreted by employees to include information about their terms and conditions of employment.” Under the NLRA, employees have the presumptive right to disclose and discuss the terms and conditions of their employment – [such as wage rates](#) – so this too was overbroad.

While having a social media policy may make sense, it is important for any company that decides to maintain such a policy to keep in mind that there are limits on what can be proscribed.