November 11, 2010

On November 2, 2010, the National Labor Relations Board ("NLRB") announced that its Hartford Regional Office had filed a complaint against American Medical Response of Connecticut, Inc. ("AMR"). The complaint alleges that AMR violated Section 7 of the NLRA by terminating an employee for posting negative comments about her supervisor on her Facebook account. The complaint also alleges that AMR maintained and enforced overly broad blogging and internet posting policies. A hearing on the complaint has been scheduled for January 25, 2011.

According to the complaint, AMR denied the employee's request for her union representative to be present after her supervisor asked her to prepare an investigative report concerning a customer complaint about her work. Later that day, the employee posted a negative remark about her supervisor on her personal Facebook page. Her comment sparked her co-workers to post other negative comments relating to the supervisor. After learning of the postings, AMR suspended and later terminated the employee, claiming her postings violated the company's blogging and internet posting policies.

AMR's policies prohibited employees, even while off-duty, from making disparaging comments about supervisors, co-workers, competitors or the company or depicting the company in any way over the internet without the company's permission. Specifically, the policies stated that "[e]mployees are prohibited from making disparaging, discriminatory or defamatory comments when discussing the Company or the employee's superiors, co-workers and/or competitors."

The NLRB alleges in its complaint that this provision is unlawful because it constitutes interference with employees in the exercise of their right to engage in protected concerted activities under Section 7 of the NLRA.

The complaint against AMR follows an Advice Memorandum ("Memorandum") issued by the NLRB's General Counsel last December that addressed the circumstances under which an employer's social media policy might violate Section 8(a)(1) of the NLRA. In that Memorandum, the NLRB General Counsel addressed a provision in a social media policy prohibiting employees from "[d]isparagement of company's or competitors' products, services, executive leadership, employees, strategy, and business prospects." The NLRB General Counsel concluded that this provision did not violate Section 8(a)(1) because it could not reasonably be viewed as chilling union activity. Importantly, there was no evidence at the time the Memorandum was issued that the employer had used its policy to discipline any employee for engaging in activity protected by the NLRA.

Although it is unclear whether AMR's social media policies will be found to violate the NLRA, employers are well advised to take precautions before taking any adverse actions against employees for personal postings such as those at issue in the complaint against AMR. If you would like to discuss these issues further or have questions about this *Alert,* please contact one of the attorneys listed above.

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