

Just What Constitutes Protected Concerted Activity in Social Media Use by Personnel?

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Should Disgruntled Employees Resort to Social Media?

Employees discussed work related problems on Facebook, with the more pointed comments paraphrased below:

It's pretty obvious that my supervisor is as immature as a person can be and she proved that this evening even more so. I'm am unbelievably stressed out and I can't believe NO ONE is doing anything about it! The way she treats us in NOT okay but no one cares because every time we try to solve conflicts NOTHING GETS DONE (Design Tech Group, LLC, 2013, p. 7).

The employee was frustrated. She perceived her workplace as unjust and manager as unfair. But can this distressed employee go to social media and seek consolation from other employees that may also be frustrated, without fear of employer reprisal?

Facts

Employers sometimes mistakenly accuse personnel of making inappropriate or harmful comments about the employer on social media. However, the federal National Labor Relations Act protects employees in the private sector who want to raise legally significant issues about their workplace, unionized or not.

Employees at the retail clothing store in San Francisco, upset about their supervisor's actions, wrote a letter detailing complaints to management. Concerns included scheduling hours, supervisors not paying for company products, abuse of break time, and not allowing employees to contact company owners even though company policy allowed this.

Another issue was closing time. The San Francisco store closed at 8 p.m., not 7 p.m., which was more common in the immediate area. Leaving after 8 p.m. made the employees nervous for their safety. The end of the tourist season led to decreased foot traffic and homeless people congregated on the sidewalk close to the store. The store did not have a security guard, surveillance camera, or panic alarm. But their supervisor did not agree with the employees' suggestion to close earlier. When the supervisor was absent, one of the employees decided to report the early closing issue to Human Resources, who suggested going to the company owner. The owner agreed to an early closing but the supervisor later complained about the employees making an end run around her. She then rescinded the early closing.

Management saw the Facebook posts, which became part of an employer decision-making process leading to the firing of the three employees. Management did not refer to the employee handbook when discussing social media. But the handbook limited personal use of the company computers to non-working periods and they were urged to minimize personal use of company computers.

Protected Concerted Activity

The basis for concerted activity was Section 7 of the National Labor Relations Act (NLRA, 1935), which stated that employees had the right to unionize and engage in collective bargaining.

The National Labor Relations Act (NLRA) was a federal statute. The NLRA oversees collective bargaining but also addresses workplace issues even if no union has been established, since the purpose of the statute was to maintain the general welfare of workers, businesses and the economy. Employers discharging or discriminating against employees protected under the NLRA were subject to investigation by the NLRB.

The NLRB (September 9, 2014) advised those with questions about protected concerted activity to contact a local NLRB office. The office would focus on three questions: Is the activity concerted? Does it seek to benefit other employees? Is it carried out in a way that causes it to lose protection? Concerted referred to two or more employees collaborating to improve working conditions or wages. The benefits must have been for more than just one employee.

Fair Discharge?

In the discharge of the three disgruntled employees, did management violate their right to protected concerted activity, even though the employees' use of social media could have been perceived by some employers as inappropriate or disrespectful?

References

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