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RECENT NLRB RULINGS CAUSE EMPLOYERS TO REVIEW WORK RULES AND SOCIAL MEDIA POLICIES

The National Labor Relations Board (“NLRB”) has recently expanded the rights of employees to use social media to publicize disputes with employers, including non-union employers. All employers should review their work rules and their social media policies to determine if they are in compliance with new restrictions imposed by the NLRB. Work rules or social media policies which are too broad, may render any disciplinary action based on such rules and/or policies unlawful, even in a non-union workplace.

Under guidelines recently released by the NLRB’s General Counsel, the following work rules were found to be overly broad. Any discipline based on these work rules would be unlawful. Examples of prohibited work rules include:

- Do not discuss customer or employee information outside of work.
- Do not disclose proprietary or confidential information about the employer, or other employees if the information was obtained in violation of law or company policy.
- If something is not public information, you must not share it.
- Be respectful to the company, other employees, customers, and competitors.
- Disrespectful conduct or insubordination will be grounds for termination.
- Do not send unwanted, offensive or inappropriate emails.
- Do not use company logos, trademarks, graphics or advertising materials in social media.

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- If you are contacted by any government agency, you should contact the law department immediately for assistance.
- Do not take action that would harm persons or property or cause damage to the company's business or reputation.

Additionally, an administrative law judge for the NLRB ruled that a non-union employer wrongfully terminated an employee who took a "selfie" of herself and other employees with her cell phone and posted the picture to her social media account and made derogatory comments about the employer, including that she was "working like a slave." The employer discharged her for disloyalty and because she violated a work rule prohibiting use of a cell phone at work. The NLRB administrative law judge ordered the employee to be reinstated with full back pay and benefits.

The work rules found to be invalid by the NLRB are common in many handbooks and policy manuals. This expansion of rights by the NLRB will create additional causes of action for disciplined and discharged employees. Employers should review their rules and policies to determine if they need revision in light of these new guidelines. Additionally, decisions regarding discipline or discharge should be reviewed with counsel in advance if such rules and policies form the basis for such disciplinary action.

If you would like additional information or would like to review the impact of these actions by the NLRB on your rules or policies, please contact:

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