

How to Get Fired in 140 Characters or Less

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What Could Possibly Go Wrong With Employee Use of Social Media?


- Employees could post negative comments about their employer
- Employees could post comments that are attributed to their employer
- Employees could post harassing comments about supervisors and co-workers
- Employees steal time or --- trade secrets

NLRB and Social Media

- Let's give this a shot – What is protected concerted activity under social media?
- An activity is "concerted" if it is undertaken by two or more employees, or by one employee on behalf of others.
- These protected communications between workers used to be face-to-face or over the phone (think of two employees discussing working conditions around the water cooler).
- Discussions of workload, wages, staffing issues, or treatment of employees by supervisors.

Topics NOT Protected By The NLRA

- Trade Secrets
- Proprietary Information
- Maliciously Defamatory
- Privileged Information
- Individual Gripses
- HIPAA Protected Information



Protected or Not?

Employee #1
 Jane Smith, a co-worker, feels that we don't help our clients enough here...I about had it! My fellow coworkers how do u feel?

4 people like this.

Employee #2
 What the f... Try doing my job I have 5 programs

Employee #3
 What the Hell. We don't have a life as it is, what else can we do???

Protected or Not?

Employee 1
 I was happy to see that the dealership went "All Out" for the most important launch of a new car in years ... a car that will generate tens of millions of dollars in revenues for the dealership over the next few years. The small 8 oz bag of chips, and the \$2.00 cookie plate, and the semi-fresh apples and oranges were such a nice touch ... but to top it all off ... the hot dog cart. Where our clients could attain a over cooked wiener and a stale bun.



Protected or Not?

Employee #1
 The government needs to step in and set a limit on how many kids people are allowed to have based on their income. If you can't afford to feed them you shouldn't be allowed to have them. Our population needs to be controlled! In my neck of the woods when the whitetail deer get to be too numerous we thin them out! Just go to your nearest big box store and start picking them off! We cater too much to the handicapped nowadays! Hell, if you can't walk, why don't you stay the f@*k at home!

Employee #2
 If you ever get what you deserve, I hope I'm there to see it.

Protected or Not?

Employee #1
 Spooky is overnight, third floor, alone in a mental institution, BTW I'm not a client, not yet anyway....My dear client Ms 1 is cracking up at my post, I don't know if she's laughing at me, with me or at her voices, not that it matters, good to laugh.

Okay to Terminate?

Snyder v. Millersville University (E.D. Pa. 2008) "The Drunken Pirate"



- Plaintiff employee was student-teacher through public college and was placed at local high school.
- Posted picture of herself on her Myspace page with caption that read "drunken pirate" – also indicated that students had accessed the page.
- She was not awarded teaching certificate and Court ruled that there was no First Amendment violation.


Okay to Terminate?

The "Cisco Fatty"



- Connor, a Cisco applicant, posted the following "tweet" on Twitter:
 - Cisco just offered me a job! Now I have to weigh the utility of a fatty paycheck against the daily commute to San Jose and hating the work.
- A Cisco employee tweeted back:
 - Who is the hiring manager? I'm sure they would love to know that you will hate the work. We here at Cisco are versed in the web.

Okay to Terminate?



I'd never let a woman kick my ass. If she tried something, I'd be like HEY! You get your b... ass back in the kitchen and make me some pie!

Okay to Terminate?



The Four Questions to Ask Before Disciplining An Employee for Social Media Activity...

- Did other employees join the conversation?
- Is the comment a continuation of an earlier group action?
- Does the comment relate to terms and conditions of work?
- Is the comment purely personal?

Key Components for Any Social Media Policy

- Direct employees to not attribute or imply that their personal opinions are endorsed or supported by the Company.
- Emphasize good judgment and responsibility.
 - Use common sense.
 - Avoid arguments and disputes.
- Require employees to refrain from malicious disparagement.
- Require compliance with all laws.
- Require compliance with rules of applicable sites.
- Always be consistent when disciplining employees who violate your policy.

Key Components for Any Social Media Policy

- Cannot prohibit employees from using the Company name, address, or other information on their personal profile without any explanation as to why employees could not identify the employer and narrowly drawn to address those concerns.
- Cannot restrain employees from using the employer's logos or photographs of the employer's.

