

What To Do When Your Employee Trashes Your Company on Social Media

04/19/18

Understandably, an employer's knee jerk reaction to discovering an employee has trashed the company on social media is to terminate the employee. Warning: employers must first closely examine the content of the employee's "trash talk" to determine whether it can be interpreted as "concerted activity" under the National Labor Relations Act ("NLRA").

Section 7 of the NLRA states "Employees shall have the right to self-organization to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other *concerted activities* for the purpose of collective bargaining or other mutual aid or protection."

There are a few questions you need to ask yourself in order to determine whether a post constitutes the type of concerted activity that is protected under the NLRA. Under Section 7, concerted activity generally requires two or more employees acting together to improve wages or working conditions. So, first ask yourself whether the intent of the social media post is to get a response from a co-worker or get co-workers involved in acting together. If so, the post may be considered concerted activity. If the post does not invite a response, it may not be concerted activity.

Next, ask yourself whether the improvement sought -- whether in pay, hours, safety, workload or other terms of employment -- benefits more than just the employee who posted. If it does, then it is likely concerted activity. If the post consists solely of a personal gripe, it is likely not protected under the NLRA.

Even a vulgarity filled post may constitute concerted activity in certain circumstances, but note that reckless or malicious behavior, such as sabotaging equipment, threatening violence, spreading lies about a product, or revealing trade secrets may cause otherwise concerted activity to lose its statutory protection.

Takeaway: Carefully consider the "trash talk" in an employee's social media post—it may be legally protected, concerted activity.

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