

Appellate Court Upholds Employee Termination for Facebook Post Stating BLM Is Racist

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On May 20, 2022, the New Jersey Appellate Division affirmed an employer's decision to terminate an employee over her comments on a Facebook post.

McVey v AtlantiCare Medical System

The employee posted that she felt the phrase “Black Lives Matter” is racist, that the Black Lives Matter movement promotes “segregation,” and that Black citizens were “killing themselves.” She later clarified that she “support[ed] all lives . . . as a nurse they all matter and [she] d[id] not discriminate.” The employee's profile displayed that she was a Corporate Director for AtlantiCare. When AtlantiCare learned of the post, an investigation was conducted, and the employee was terminated. The employee was told that she was being terminated due to her “repeated instances of poor management judgment – a failure to uphold AtlantiCare values.” The employee sued, alleging wrongful discharge.

Employer Social Media Policy

The employer had a written social media policy that stated, “[E]mployee use of social media [a]ctivities, inside or outside of the workplace, has the potential to affect AtlantiCare employee job performance, the performance of others, AtlantiCare's brand and/or reputation and AtlantiCare's business interests.” The policy also provided that employees were “personally responsible” for the content they posted on social media.

Employee Suit Claims

The employee alleged that her termination was punishment for exercising her First Amendment right under the Constitution and the equivalent entitlement under the New Jersey Constitution. She further alleged that she was wrongfully discharged in violation of a clear mandate of public policy. AtlantiCare filed a motion to dismiss, arguing that there was no state action, so the employee could not have a free speech claim. The trial court agreed with AtlantiCare and dismissed the employee's complaint.

Decision by the Appellate Division

The Appellate Division upheld the lower's court decision. The Appellate Division noted that no court in New Jersey had ever “held that a private entity that encroaches upon a private individual's constitutional rights to free speech has violated a clear mandate of public policy.” The Appellate Division further noted that the majority of courts that have examined this issue in other jurisdictions have also precluded such a claim.

Takeaway: In light of the New Jersey court's holding on free speech, employers should review social media policies to ensure that employees are aware that social media posts can affect their jobs. Employers with questions about the recent court decision can contact Tracy Armstrong or another member of the Wilentz [Employment Law](#) Team.

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