

Employers Should Review Their Social Networking Policies

— hugheshubbard.com —



As we reported in our November 2010 advisory, *NLRB Issues Complaint Against Employer for Facebook Termination*, the National Labor Relations Board has created significant uncertainty about the permissible scope of an employer's social media policy. The Board issued a complaint against an employer who fired an employee for posting negative comments about her supervisor on her Facebook page. Following our advisory, Hughes Hubbard partner Marshall B. Babson, formerly a Member of the NLRB, was quoted in the *New York Times* for his observation that the Board viewed the employer's social networking policy as overbroad. (Steven Greenhouse, *Company Accused of Firing Over Facebook Post*, N.Y. Times, November 8, 2010.) The law is evolving in this area and clients are increasingly asking us to review their social networking policies to be in the best position to defend against claims that such policies are unlawful.

All employers, whether unionized or not, should have their social networking policies reviewed against the following guidelines: (1) social networking policy prohibitions should be narrow rather than broad given that policies containing blanket prohibitions on criticism of the company or its management are now likely to be viewed as overbroad; (2) however, policies can prohibit employees from using social networking sites to make disparaging comments unrelated to work; (3) distinctions between employees using their employers' computer systems as opposed to their personal computers during non-work hours may be relevant for other purposes but are unlikely to be relevant here; (4) social networking policies may prohibit employee statements that are abusive, libelous or obscene; (5) in defining acceptable employee conduct, policies should distinguish between employee conduct that is rhetorical hyperbole as opposed to conduct that constitutes fraudulent misrepresentations of fact; and (6) employees may be restricted from anticompetitive, disloyal behavior if the policy is properly worded.

A hearing on the NLRB *Facebook* case is scheduled for January 2011. We will keep you posted as to significant developments.

Ned Bassen
(212) 837-6090
bassen@hugheshubbard.com

Rita Haeusler
(213) 613-2896
haeusler@hugheshubbard.com

Christine Fitzgerald
(212) 837-6374
fitzgera@hugheshubbard.com

Labor & Employment
December 2010



Hughes Hubbard & Reed LLP
One Battery Park Plaza | New York, New York 10004-1482 | 212-837-6000

Ethics rules require this to be labeled attorney advertising.
Readers are advised that prior results do not guarantee a similar outcome.

This e-ALERT is for informational purposes only and is not intended to be and should not be relied on for legal advice. If you wish to discontinue receiving e-ALERTS, please send an email to opt-out@HughesHubbard.com.

© 2010 Hughes Hubbard & Reed LLP