## Social Media Considerations for Retail Employers

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Give me the opportunity to paint a picture for you. You are a hardworking business entrepreneur who 15 years ago opened a convenience store/gas station in your hometown. Over those 15 years you have expanded your company from one store to 20 stores in a three state area, and now you are talking to lawyers about franchising your company.

Things are exciting and the opportunities are vast. The last thing you remember your franchising advisors telling you is that it was very important for franchising your company to make sure that the goodwill and the company name remain untarnished. The next day you walk into the corporate office and you receive a call from one of your store managers who frantically tells you that a low-level clerk over the past week has been posting notices on his Facebook page about the company.

The notices fall into several categories. The first group of postings concern complaints by this employee and others in the company that your store does not pay reasonable wages. The second set of complaints address the way the company schedules working shifts. Finally, the third set of postings address scandalous claims that your company sells tainted milk and rancid meat.

While these examples seem farfetched, they are being faced by more and more employers every day. Your initial reaction is to do two things immediately: (1) fire the employee; and (2) draft a new policy that prohibits employees from discussing the company on social media sites. Unfortunately, you cannot take such actions under the law.

The National Labor Relations Board (NLRB) in the past two years has become very involved in the social media arena. Through a series of three memos the NLRB's General Counsel has opined that employers may not prohibit their employees from discussing workplace issues on social media sites. The current board takes the position that social media policies prohibiting employees from discussing their employer at all are a violation of the National Labor Relations Act. A social media policy will only be upheld if it is narrowly tailored and gives specific examples of prohibited and legitimate social media discussions. In the examples cited above, the first two categories of comments made by the employee would be protected activity under Section 7 of the National Labor Relations Act.

The employee is engaged in concerted and protected activity on behalf of himself and his fellow employees because he is discussing issues that go to the working conditions of employees. The third category, because it contains untrue comments, would not be protected activity.

Accordingly, the convenience store employer would be permitted to discipline the employee for making the third set of comments but not the first two.

All employers are encouraged to consider these issues carefully when adopting a social media policy. As the old adage goes, an ounce of prevention is certainly worth a pound of cure.

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