

MODERN MANAGEMENT

BAD BEHAVIOR BY CONGRESSMEN REAFFIRMS THE NEED FOR SOCIAL MEDIA POLICY

The recent resignations of Congressmen David Wu (D-OR) and Anthony Weiner (D-NY) as a result of their inappropriate behavior on Twitter and the Internet has employers reconsidering the question of how to craft and hone an effective social media policy. Industry analysts report that 66 percent of online Americans are visiting social media networking sites such as Twitter, Facebook, and LinkedIn, up from just 20 percent three years ago, making the need for a written policy obvious.

Recent NLRB cases have held that employee complaints about employers voiced on social media networks are protected as “concerted activity.” However, the NLRB Division of Advice recently considered three cases of employees fired or disciplined for social media use. In all instances, the Board reviewed “what does the employer’s social media policy say, and what does the employer do to enforce it.” These opinions state that an overly broad policy may infringe on employees’ right to participate in protected activity. However, an employer can prohibit certain uses of social media sites without violating the NLRA. Spreading gossip or otherwise tarnishing the company’s image through social media is afforded little or no protection under the NLRA.

Further, supervisors (as that term is defined in the NLRA) have no right to engage in concerted activity against employers. Thus, effective social media policies should forbid supervisors from using social media to say anything negative relating to the employer under any circumstances.

The informal nature of social media allows for some to let their guard down, or “tweet before they think” making confidentiality another major concern for employers. Even an accidental leak of corporate secrets could be highly detrimental to company interests. Thus, a comprehensive social media policy should prohibit dissemination of proprietary and confidential information.

NATIONAL LABOR REVIEW BOARD/BOEING UPDATE

The NLRB Chairman opened a public meeting on July 18 admitting that the proposed rule changes have caused “some controversy” and they are approaching the proposal with “open minds” and a desire to hear public views both in the meeting and from the written comments which are due by August 22, 2011. The motives of the NLRB majority were challenged by management attorney, G. Roger King, representing SHRM who stated that “the institutional credibility and neutrality of the agency is at issue here.” More than 13,000 written comments have already been submitted. <http://www.regulations.gov>

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SEMINAR INVITATION

Lemle & Kelleher, L.L.P.
presents

MODERN MANAGEMENT BRIEFING

A half-day labor and employment
law seminar.

Thursday, September 15, 2011

8:15—12:00 Noon

Lemle & Kelleher, L.L.P.

Pan-American Life Center

601 Poydras Street

21st Floor

New Orleans, Louisiana 70130

\$20.00 per attendee

TOPICS:

The ABC’s of Louisiana State Labor
& Employment Laws

Independent Contractors vs.
Employees—Issue of the Decade

Background Checks: The good, the
bad, and the ugly

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NLRB/BOEING UPDATE *(cont'd from pg.1)*

Prompted by the NLRB's disputed Unfair Labor Practice complaint against Boeing Co. on July 21 a House Committee proposed the **Protecting Jobs from Government Interference Act (H.R. 2587)**. The vote was 23-16 in Committee, but is not expected to become law even if the bill clears the House as the Senate will likely kill it.

The Senate **Job Protection Act (S. 964)** and companion House bill (**H.R. 1976**) would limit NLRB's remedial authority and amend NLRA provisions on employer discrimination and free speech. There was vigorous debate both pro and con, especially by Joe Wilson (R-SC) whose state is directly impacted. He labeled the NLRB's complaint a "threat to all right-to-work states" and charged that they are "overreaching and killing jobs." He also called the present board "labor's lap dog."

JOB ADS TARGET EMPLOYED WORKERS

New legislation has been proposed to bar employment agencies and employers from refusing to consider out-of-work job applicants based on their unemployed status. The **Fair Employment Opportunity Act (H.R. 2501)** was proposed based on research results that found job ads specified "applicants must be currently employed." Four of the most prominent online job listing websites, including Monster.com and CareerBuilder.com, are full of such postings by small, medium and large companies trying to fill jobs covering a broad cross-section of skill levels...white collar, blue collar and service industry positions. The report said that unemployed workers are perceived to be less likely to be hard workers or considered lazy by potential employers.

FMLA BEREAVEMENT LEAVE PROPOSED

The **Parental Bereavement Act (S. 1358)** has been introduced in the Senate to amend the Family and Medical Leave Act to allow parents grieving the death of their child to receive up to 12 weeks of job-protected leave. Currently workers are eligible to take the leave to care for their newborns, adopted children, family members with serious health conditions, or their own serious health conditions. Businesses with fewer than 50 employees are not affected.

LEMLE & KELLEHER LABOR AND EMPLOYMENT ATTORNEYS

The labor and employment attorneys in our firm have a national and international practice representing union and non-union companies in practically every industry. Our labor attorneys have developed strong experience and hands-on knowledge of how business really works.

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