



Employment Practices

Courtesy of Meridian Benefits Consulting

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Employees often write posts about the company on social media sites.

Do I have the authority to monitor this and discipline an employee if negative comments are made, even though it's outside of working hours?

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An employee's right to comment on his or her employer may be protected by the National Labor Relations Act (NLRA). Provisions of this act, such as the right of employees to discuss, question or criticize their terms and conditions of employment, extend to unionized **and** nonunionized workers.

Under the NLRA, if an employee is addressing group concerns or is acting on behalf of others, those activities are protected and employers may not take disciplinary action against the employee. This protection extends to social media posts and situations where employees have commented on or "liked" co-workers' online posts made during or outside of working hours.

However, this protection does not apply to outrageously disgraceful or shameful conduct and reckless or maliciously untrue communications. In addition, individuals are not protected by the NLRA when they act in their own interests or address purely personal complaints.

To avoid violating NLRA protections for employees using social media, employers should adopt policies that are narrowly tailored to:

- Prevent discriminatory remarks, harassment, bullying, threats of violence and other behavior that is unacceptable at the workplace;
- Request that employees identify that their comments are their personal opinions and do not represent their employers' official positions on any specific issues; and
- Request that employees do not disclose trade secrets, publish internal reports, provide tips based on inside information or participate in other activities that may be considered inside trading.

Employers wishing to manage their online reputation should refrain from participating in controversial practices such as requiring employees to disclose their personal social media login information. Many states have laws prohibiting such conduct by employers.

For more information regarding how to establish NLRA-acceptable social media policies, please contact Meridian Benefits Consulting.