



Practice Tips for Employers' Social Media Policies

By: Allison M. O'Neil and Kaitlin J. Brown

The National Labor Relations Board recently invalidated Chipotle's employee social media policy. According to the NLRB's decision, the policy's language was too broad and the meaning of its terms was too vague. As a result of this decision, any disciplinary action taken by Chipotle that relied on its policy was invalidated. In light of this ruling and similar recent NLRB decisions, employers need to review their social media policies to ensure they are valid and enforceable.

The following are quick tips for employers to consider when reviewing social media policies in light of the NLRB's Chipotle ruling:

1. Make sure the language of the policy does not impermissibly restrict employee action protected by the National Labor Relations Act (protected activity).

The NLRB invalidated Chipotle's policy, in part, because an employee could have read it as prohibiting him or her from organizing or otherwise engaging in protected activity on behalf of co-workers. To illustrate, employers should avoid using language such as "employees are prohibited from spreading incomplete, confidential, or inaccurate information" about their employer.

2. Define terms so that policy language is not open to multiple interpretations.

Chipotle's policy contained language that the Board found vague and thus subject to an interpretation that it was prohibiting protected activity. Without carefully defining the terms, employers should avoid using language such as "employees are prohibited from making disparaging, false or misleading statements about or relating to" their employer. If the terms "disparaging," "false," or "misleading" are not defined in the policy, they are likely too vague and could be held in violation of the NLRA even if the employer did not try to enforce its policy. In addition, the Chipotle decision teaches that an employer cannot punish employees for statements that are simply false or misleading, but instead, can only regulate employee comments with a malicious intent to harm it.

3. Employers may be able to prohibit employees from making harassing or discriminatory statements.

In the Chipotle decision, the Administrative Law Judge determined that prohibiting harassing and discriminatory statements was an acceptable limit on employee social media use because a typical, reasonable employee understands the terms harassing and discriminatory. Because the General Counsel did not file an objection to this finding, the NLRB did not address this issue.

Employee social media use has been and remains a hot topic in work places of every stripe. In the ever-changing social media space, it is critical that employers remain informed about the latest



decisions and legal trends. For more information on how to evaluate and update your employee social media policies, you may contact **Allison O'Neil** or **Kait Brown** or a member of the Locke Lord Labor and Employment Group with whom you regularly work.

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