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Here are six offenses employers should watch for when they draft their social media policy.

By Jenny Ivy | May 30, 2012 at 10:32 AM | Originally published on Benefitspro.Com



(photo: freedigitalphotos.net)



The National Labor Relations Board has been doing hard investigations based on social media activities and policies — a process that has been gaining momentum since social media is increasingly being integrated inside and outside of the workplace.

In a new report, Acting General Counsel Lafe Solomon details where parts of an employer's social media policy were breaking the law.

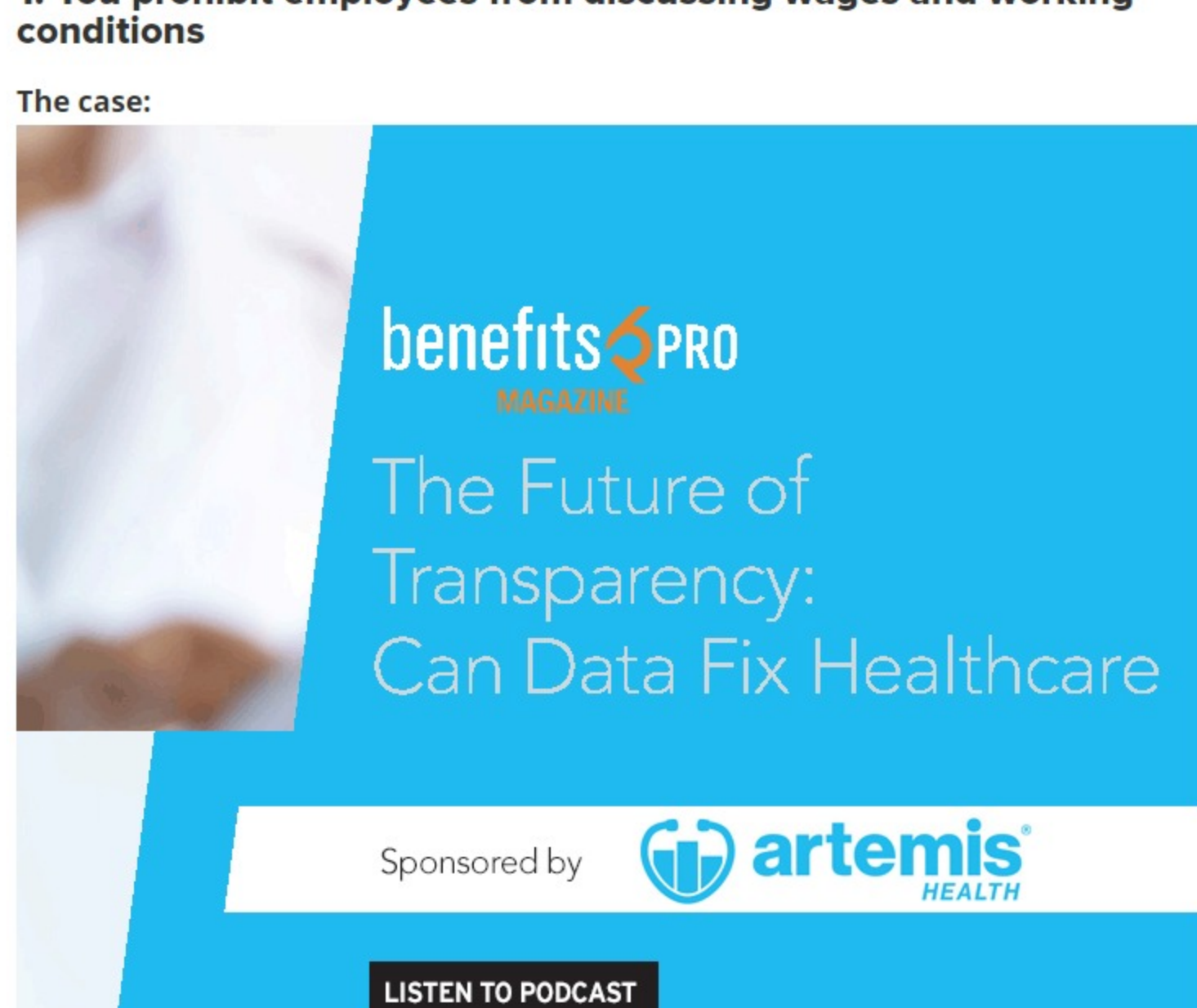
[See also: [The perfect social media policy](#)]

According to the NLRB, provisions are found to be unlawful when they interfere with the rights of employees under the National Labor Relations Act, such as the right to discuss wages and working conditions with co-workers.

Here are six offenses employers should watch for when they draft their social media policy>>

1. You prohibit employees from discussing wages and working conditions

The case:



The NLRB investigated an employer that operates retail stores nationwide. In its handbook, the company told employees, "Don't release confidential guest, team member or company information."

Why it's against the law:

"Its instruction that employees not 'release confidential guest, team member or company information' would reasonably be interpreted as prohibiting employees from discussing and disclosing information regarding their own conditions of employment, as well as the conditions of employment of employees other than themselves—activities that are clearly protected by Section 7," Solomon writes.

"The Board has long recognized that employees have a right to discuss wages and conditions of employment with third parties as well as each other and that rules prohibiting the communication of confidential information without exempting Section 7 activity inhibit this right because employees would reasonably interpret such prohibitions to include information concerning terms and conditions of employment."

2. You require permission from the company to post Section 7 activities

The case:

The NLRB investigated a motor vehicle manufacturer. The company advises employees to "check with [Employer] Communications or [Employer] Legal to see if it's a good idea," before posting company information online. The employer also requires workers to get permission before posting "photos, video, quotes or personal information of anyone other than you online."

Workers are also prohibited from incorporating employer logos, trademarks or other "assets" in posts.

Why it's against the law:

The company broke the law when it required employees to check with the employer to see if it's "a good idea" to post communication that may be federally protected. "The Board has long held that any rule that requires employees to secure permission from an employer as a precondition to engaging in Section 7 activities violates the Act."

And, by requiring employees to obtain permission before posting something like an employer trademark, this violates the National Labor Relations Act, which allows workers non-commercial use of the employer's logo or trademarks while engaging in Section 7 activities.

3. You tell workers not to 'pick fights' when engaging online

The case:

An international health care services company tells workers to "adopt a friendly tone when engaging online. Don't pick fights."

Why it's against the law:

In warning employees not to "pick fights" and to avoid topics that might be considered objectionable or inflammatory, such as politics and religion, and reminding employees to communicate in a "professional tone," the overall thrust of this rule is to caution employees against online discussions that could become heated or controversial, according to Solomon. "Discussions about working conditions or unionism have the potential to become just as heated or controversial as discussions about politics and religion. Without further clarification of what is 'objectionable or inflammatory,' employees would reasonably construe this rule to prohibit robust but protected discussions about working conditions or unionism."

4. You tell employees not to air their grievances online

The case:

In its handbook, an international health care services company tells employees that they are encouraged to resolve concerns about work by speaking with co-workers, supervisors, or managers. Individuals are more likely to resolve concerns about work by speaking directly with co-workers, supervisors or other management-level personnel than by posting complaints on the Internet, the handbook states.

Why it's against the law:

An employer may reasonably suggest that employees try to work out concerns over working conditions through internal procedures, Solomon writes. However, by telling employees that they should use internal resources rather than airing their grievances online, "we found that this rule would have the probable effect of precluding or inhibiting employees from the protected activity of seeking redress through alternative forums."

5. You prohibit workers from openly criticizing the employer based on labor policies or treatment of employees

The case:

An employer tells workers they "may not make disparaging or defamatory comments about [employer], its employees, officers, directors, vendors, customers, partners, affiliates, or our, or their, products/services. Remember to use good judgment."

Why it's against the law:

Solomon writes: "We concluded that several aspects of this social media policy are unlawful. First, the prohibition on making 'disparaging or defamatory' comments is unlawful. Employees would reasonably construe this prohibition to apply to protected criticism of the employer's labor policies or treatment of employees. Second, we concluded that the prohibition on participating in these activities on Company time is unlawfully overbroad because employees have the right to engage in Section 7 activities on the Employer's premises during non-work time and in non-work areas."

6. You require that all social media posts are 'completely accurate and not misleading'

The case:

A motor vehicle manufacturer tells its employees that if they engage in a discussion related to the employer, in addition to disclosing that you work for that employer and that your views are personal, you must also be sure that your posts are "completely accurate and not misleading and that they do not reveal non-public company information on any public site. If you are in doubt, review the [Employer's media] site. If you are still in doubt, don't post."

Why it's against the law:

The term "completely accurate and not misleading" is overbroad, Solomon writes, because "it would reasonably be interpreted to apply to discussions about, or criticism of the Employer's labor policies and its treatment of employees that would be protected by the [National Labor Relations Act] so long as they are not maliciously false. Moreover, the policy does not provide any guidance as to the meaning of this term by specific examples or limit the term in any way that would exclude Section 7 activity."

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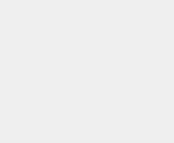
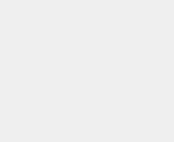
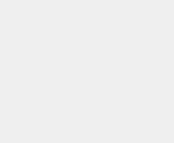
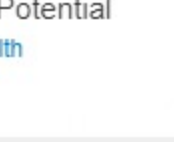
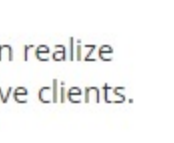
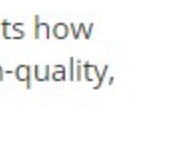
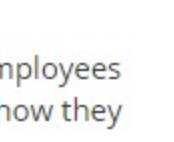
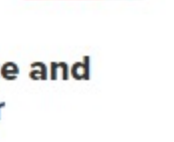
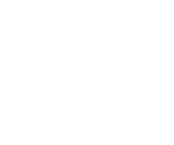
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