

Social media policies may violate employee rights

Susan R. Blackman
Willcox Savage

© October 15, 2012 *Inside Business*

The Acting General Counsel of the National Labor Relations Board has issued multiple memos addressing employees' rights in social media communications.

The memos, and the NLRB opinions that led to them, outline broad protections for employees when using social media. The General Counsel's position is that any communication to a co-worker complaining about the terms or conditions of employment may constitute protected activity under the National Labor Relations Act.

Under Section 7 of the NLRA, employees have the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

If an employee posts online comments complaining to co-workers about wages or conditions of employment, or encouraging fellow workers to push for improvements in these areas, such comments would likely be considered protected activity under the NLRA.

Before disciplining an employee for any comments about the workplace, the employer should consider whether any of the employee's comments are legally protected.

Furthermore, the General Counsel has made it clear that the NLRB will scrutinize employers' social media policies to ensure that they do not discourage employees from exercising their rights. For example, the memos state that a policy prohibiting online comments that are "disparaging or defamatory" are overbroad because they might discourage an employee from complaining to a co-worker about a supervisor who treats employees badly.

Additional information will be presented at the Willcox Savage Employment Law Update seminar on Oct. 18. Admittance is free. The seminar begins at 8 a.m. and will end at noon. For more information, call 628-5631.

Susan R. Blackman is a partner in the Employment Law and Business Immigration Groups at the law firm of Willcox Savage. She can be reached at sblackman@wilsav.com or 628-5646.