

## EMPLOYMENT LAW CLIENT E-ALERT JUNE 2012

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### UPDATE: INTENSE SCRUTINY OF SOCIAL MEDIA AND INTERNET USE POLICIES

Policies restricting employee online activities are critical to safeguard confidential information, protect the employer's good will and reputation, avoid discrimination and harassment claims, and maintain workplace morale. However, policies regarding employee use of social media and the Internet are under fierce attack by the National Labor Relations Board. The NLRB restrictions on workplace social media and Internet use policies are applicable to virtually all employers engaged in interstate commerce, *regardless of whether the company has a unionized or non-unionized workforce.*

The Acting General Counsel of the NLRB recently released the Board's third report on workplace social media policies. According to the NLRB, many provisions typically found in social media and Internet use policies are overly restrictive and "tend to chill employees" in the exercise of their rights under the National Labor Relations Act. Of primary concern to most employers, the NLRB considers unlawful any rule that might be ambiguous with respect to employee rights under the NLRA. For example, the following were found to be unlawful:

- ▶ Directive to employees to "avoid harming the image and integrity of the company";
- ▶ Prohibitions on employees posting online information about the employer that could be deemed "material and non-public" or "confidential or proprietary";
- ▶ Policy instructing employees that their online statements must be "completely accurate and not misleading" and "not reveal non-public information on any public site"; and
- ▶ Provision stating that "offensive, demeaning, abusive, or inappropriate remarks are as out of place online as offline."

At this time, all workplace social media policies must be reviewed with care. Most will require revisions to comply with the new NLRB guidance.

If you have any questions about this alert, please contact one of our employment partners, [Gary M. Feldman](#) or, [Tamsin R. Kaplan](#) in our [Employment Law Practice Area](#).

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