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Can workers be punished for griping about their jobs on Facebook?

A lot of companies assume it's okay to fire or discipline employees who complain about their jobs on Facebook or other social media sites – especially if they start calling supervisors names, or bad-mouthing the company in a public way.

But in some cases, disciplining an employee for a Facebook rant could violate federal labor law. These employees could file a complaint with the National Labor Relations Board...even if they don't belong to a union.

In the past year, more than 100 complaints have been brought before the NLRB over "Facebook firings," involving companies ranging from giants such as Wal-Mart to local bars and car dealerships. In about half the cases it reviewed, the NLRB issued a civil complaint.

In one of the first cases, a paramedic was fired after she called



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her supervisor a "scumbag" and a "17" (code for a psychiatric patient) on Facebook from her home computer. The ambulance company ended up settling the complaint with the government – and as part of the settlement, it agreed to revise its policy on employees' Internet postings.

A right to complain

Federal law makes it illegal for companies to discipline workers for "protected concerted activity" – regardless of whether the worker belongs to a union.

That means that workers have a right to discuss their conditions of employment with each other, try to speak on behalf of other workers

about workplace conditions, and attempt to improve things for other workers.

If a Facebook rant arguably falls into any of those categories, it

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Businesses might have to help disabled workers commute

The Americans with Disabilities Act requires employers to reasonably accommodate disabled employees at work...but a new court decision says that they might also have to help disabled employees with their commute.

Barbara Nixon-Tinkelman, who worked for a city agency in New York, was hearing-impaired and suffered from cancer, heart problems and asthma. When her employer reassigned her to spend nine months working in Manhattan rather than a more convenient location in Queens, she asked for help

with her more difficult commute.

A federal judge sided with the agency, saying it didn't have to accommodate the woman because commuting was "outside the scope of her job."

But on appeal, a higher court sided with Nixon-Tinkelman. It said the agency had a legal obligation to consider a number of possible accommodations, including transferring her back to a more convenient location, letting her work from home, or providing her with a car or a parking permit so she didn't have to use public transportation.

As long as workers are commenting on workplace issues with each other or hoping to improve work conditions generally, they can even call supervisors names or bad-mouth the company in certain ways.

Can workers be punished for griping on Facebook?

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may be protected.

For instance, the paramedic was unhappy about being reprimanded earlier for a customer complaint, and made the "scumbag" comment during an online discussion with other employees. The NLRB decided that discussing a supervisor's actions with co-workers was "protected concerted activity."

As a general rule, as long as workers are commenting on workplace issues with each other or hoping to improve work conditions generally, they can even call supervisors names or bad-mouth the company in certain ways – although they can't make verbal or physical threats.

On the other hand, if workers are just griping to their friends outside of work about something that only affects them personally, and they aren't trying to improve general conditions or speak for other employees, they aren't protected.

The NLRB also says that employers can punish name-calling that goes too far.

In one case, a Frito-Lay warehouse worker was fired after saying on Facebook that he was "a hair away from setting it off" in his workplace. The worker claimed that he was just venting about the company's sick-leave policy, but the NLRB sided with Frito-Lay and said the company could reasonably have interpreted the comment as a threat to cause physical harm.



On the other hand, a non-profit organization in Buffalo, N.Y. was ordered to reinstate five workers it had fired after they complained online about a co-worker who had criticized their work ethic.

According to the employer, the co-worker felt so threatened by the comments that she had a heart attack. But a judge found that the workers' speech was protected, and didn't amount to a threat.

Another case involved a Chicago bartender who complained on Facebook that his company's tip-pooling policy "sucked." While the complaint was about a workplace issue, the NLRB sided with the employer because the

bartender directed the gripes only to his friends and didn't bring up the issue with co-workers.

Also in Chicago, a BMW salesman was fired after he made two sarcastic posts on Facebook. One mocked his employer for serving hot dogs and bottled water at a sales event for luxury cars. Another showed a picture of a customer's 13-year-old son driving an SUV into a pond.

The result? A judge found that the hot-dog post was protected (because other employees were also complaining online about the sales event, which could hurt their commissions), but the salesman could be fired for the pond photo because it had nothing to do with his working conditions.

We'd be happy to talk with you if you have questions about your company's social media policy.

‘Whistleblowers’ have more rights than you might think

When an employee comes forward with evidence of wrongdoing in a company, it’s important for the employer to take the allegations seriously.

That’s because many state and federal laws have “whistleblower” provisions that prohibit employers from firing, demoting or otherwise punishing workers who report legal or ethical violations.

These laws are complex, in part because there’s no “one size fits all” standard. They vary among industries, among types of companies, and between states. So if you’re a whistleblower or you have an employee who’s a whistleblower, it’s wise to consult an attorney who can give you the lay of the land.

Some legal protections for whistleblowers are not obvious. Take the case of Anthony Menendez, who worked for Halliburton, the oilfield-services giant.



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Menendez claimed he observed irregularities in the company’s accounting practices and reported them to his supervisor. When the supervisor dismissed his concerns, Menendez filed a confidential complaint with the Securities and Exchange Commission, and later sent an e-mail to the company’s audit committee.

Members of the audit committee forwarded the e-mail to other employees, in effect “outing” Menendez as a whistleblower, which he claimed led to difficulties in the workplace.

Menendez filed a complaint, arguing that forwarding the e-mail violated his right to confidentiality under the Sarbanes-Oxley Act, a federal law that regulates accounting in publicly traded companies. A Labor Department administrative review board agreed, finding that Halliburton violated his rights.

Many state and federal laws have whistleblower provisions that prohibit businesses from firing, demoting or otherwise punishing workers who report legal or ethical violations.

Companies can’t discriminate when ordering medical exams

Companies can require their employees to undergo medical examinations in certain situations as a condition of employment. But as a recent case from Maryland’s highest court shows, they can’t do so in a discriminatory manner.

In that case, an employer had required a female truck driver to have a medical exam for a condition involving heavy menstrual bleeding. She filed a complaint with a local civil rights commission. When the employer learned about the complaint, it fired her. She sued for sex discrimination and retaliation.

According to the employee, the exam requirement amounted to sex discrimination because several male employees with serious health problems, including diabetes, Parkinson’s Disease and severe dizziness, were not required to undergo medical tests.

The court agreed, upholding a substantial jury verdict for the employee.

Job-bias rules might not apply to religious groups

The usual rules that prohibit job discrimination don’t always apply to religious organizations, according to the U.S. Supreme Court.

The court sided with a Lutheran church in Michigan that was sued for disability discrimination after it fired a teacher who took time off to be treated for narcolepsy.

The court said that if the church were forced by the government to accept a “minister” it didn’t want, this would violate the First Amendment, which guarantees freedom of religion.

And in this case, although the teacher taught secular subjects, she also had ministerial training and led students in prayer – so she qualified as a “minister.”

However, the ruling only applies to employees who are ministers. Thus, while it might apply to a teacher at a religious school, it presumably wouldn’t apply to other secular employees, such as a school cafeteria worker.

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Another state limits credit checks on job applicants

California has become the latest state to limit employers' ability to run credit checks on job applicants.

Under a new law, employers are prohibited from conducting these checks except for managerial and law-enforcement positions, jobs requiring regular access to confidential information or more than \$10,000 in cash, and jobs requiring the employee to make financial transactions on the employer's behalf.

Similar laws have now been enacted in Connecticut, Hawaii, Illinois, Maryland, Oregon, and Washington, and have been proposed in about 10 other states.

In addition, the federal Equal Employment

Opportunity Commission recently issued a warning that credit checks could be illegal if they lead to the disproportionate exclusion of women, minorities or other protected groups.

Many employers run credit checks on candidates for jobs that involve financial responsibility, but some run checks on all candidates believing that employees with good credit are more likely to be reliable, responsible and honest.



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According to the Society for Human Resources Management, some 60% of businesses now run credit checks on at least some job applicants, up from 42% five years ago. About 13% of employers run credit checks for every job.

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