

NLRB Says Employees Lawfully Fired for Facebook Post

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An administrative law judge for the National Labor Relations Board (NLRB) recently found that a non-profit center lawfully fired two employees who worked in a teen center after they made non-public comments on Facebook about having “crazy events” at the center without permission, including parties and field trips, and would not assist the center if “they start loosin’ kids.” In May 2012, a supervisor asked the teen center employees to evaluate her job performance. The employees identified a number of complaints, including feeling unappreciated and a lack of supervision. The employer sent both employees rehire letters at the end of July. In August, the two employees began a Facebook conversation that was accessible only by the employees’ “friends,” although those friends included another employee and manager. The conversation included complaints that the employer did not appreciate employees, along with the comments about holding events without permission, among others. The employer found out about the conversation and rescinded the rehire offers. The ALJ found that the employees were engaged in protected activity in May, when they identified their complaints about the employer. Additionally, the two employees were engaged in concerted activity when they commented on Facebook about the management of the teen center. However, the ALJ found that the employer could have lawfully determined that the employees were “unfit for further service” such that their comments were outside of the protection of the National Labor Relations Act, because the Facebook comments jeopardized the program’s eligibility for grants and funding, as well as the safety of the teens served by the center. The ALJ recommended that the complaint be dismissed.

TIP: Employers should be aware that the protections of the NLRA may extend to conversations outside of the workplace and on social media. Employees may lose the protection if their conduct is egregious or shows them to be unfit for further service. However, employers should consult with counsel before terminating employees for comments made on social media.

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