



2ND QUARTER *Brief*

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Legal Spotlight on Facebook Posts

Millions of users turn to Facebook for all kinds of matters. But how far can employees go in commenting about work-related issues?

The legal boundaries are slowly being drawn. In one highly publicized case, the National Labor Relations Board (NLRB) jumped to the defense of an employee who was allegedly fired for posting derogatory comments about her supervisor online. The case was recently settled out of court.

Facts: The NLRB accused American Medical Response (AMR) of Connecticut of illegally firing one of its employees. In a Facebook post, the employee claimed that her supervisor had prevented her from having a union representative present while she responded to customer complaints.

However, the online remarks included certain vulgarities, as well as this comment "Looks like I'm getting some time off. Love how the company allows a 17 to be a supervisor." A 17 is the code that the company uses for a psychiatric patient.

After the employee was fired, the NLRB issued a complaint against AMR. It alleged that the firm engaged in unfair labor practices by firing the employee for the online comments. The NLRB also asserted that AMR's policy on Internet postings was overly broad.

Under the National Labor Relations Act, employers cannot enforce policies that impede an employee's right to discuss wages, working conditions or unionization. In this case, the NLRB argued that criticism of a supervisor, as part of a discussion with coworkers, is protected activity under the Act—even if the

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Coping with New Estate-tax Rules

The new "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" includes much-anticipated estate-tax relief. However, the good news is only temporary. Unless Congress passes further legislation, the new estate-tax provisions will expire after 2012.

Background: Under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the estate-tax exemption equivalent gradually increased from \$1 million in 2001 to \$3.5 million in 2009. At the same time, the top estate-tax rate decreased from 55% to 45%. Among other changes, EGTRRA also separated the estate- and gift-tax regimes and maintained a \$1 million lifetime gift-tax exemption.

The estate tax was completely repealed by EGTRRA, but only for decedents dying in 2010. Also, the rules allowing a step-up in basis for inherited assets were replaced by modified "carryover basis" rules. Beginning in 2011, the estate tax was scheduled to be reinstated under pre-EGTRRA levels.

New rules: However, the estate-tax exemption is increased to \$5 million by the new tax law, with a top estate-tax rate of 35%. These figures will remain in

effect for 2011 and 2012 (with indexing for 2012). The new law also reinstates the rules allowing a step-up in basis for heirs.

Be aware that the families of decedents dying in 2010 can effectively choose between the "old rules" in effect for 2010 or the "new rules" that take effect in 2011. The new law also allows the estate-tax exemption to be "portable" for decedents dying in 2011 or 2012. As a result, a family may be able to utilize the full \$10 million in exemptions for a married couple, regardless of how they have divided up assets.

The estate- and gift-tax systems are also "reunited" for transfers after 2010 with an exemption of \$5 million and a top gift-tax rate of 35%. Finally, the new law coordinates estate- and gift-tax changes.

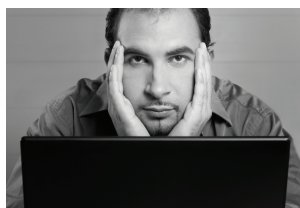
In the wake of the new law, it still makes sense to continue giving gifts that qualify for the annual gift-tax exclusion. This can reduce the size of a taxable estate. For 2011, you can give each recipient up to \$13,000 without triggering any gift tax (\$26,000 for joint gifts by a married couple). Any excess may be covered by the \$5 million gift-tax exemption (but that reduces the available estate-tax shelter).

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communication takes place on a social media Web site such as Facebook.

For its part, AMR maintained that the employee wasn't fired because of the postings. Instead, it claimed that termination resulted from complaints made by patients and staff about the employee. The employee had requested that a union representative be present during an investigation of those complaints by AMR, but the request was denied. It was at this point that the employee was fired. AMR characterized the firing as being due to her "rude and unprofessional conduct."



The NLRB also objected to the broad terms in AMR's handbook concerning online postings and blogs. In one section, the handbook says, "Employees are prohibited from making disparaging, discriminatory or defamatory comments when discussing the Company or the employee's superior, coworkers and/or competitors." The NLRB cited this section as being vague and conflicting with labor laws allowing employees to criticize bosses and discuss employment matters with coworkers.

The outcome: AMR has agreed to change the policy that prohibits workers from posting disparaging comments about supervisors. It will also amend its rules concerning company depictions over the Internet.

Basic Rules on Unemployment Benefits

The general rule concerning unemployment benefits is that employees are eligible if they are fired, but not if they quit. However, if an employee quits for "good cause," he or she may be entitled to unemployment benefits. And employees who lose their jobs due to their own misconduct may not be able to collect.

The outcome depends on the applicable state law. Each state has its own procedures for conducting an appeal. With so much at stake, it makes sense to obtain a legal opinion if you are unsure of your position.

Legal Briefs

*Rating Employees—When employees are fired for absenteeism, they often point out unequal treatment under company policy. New case: A Disney employee, who was African-American, lost his job after receiving a poor attendance rating. He claimed that a Hispanic female missed more total hours than he did before she was fired. But the court upheld the company policy based on monthly ratings as being fair.

*Face the Facts—Cosmetic surgery is not considered a "serious health condition" covered under the Family Medical Leave Act (FMLA). In a new case, an employee of the city of Chicago initiated a retaliatory lawsuit after she was fired. She had requested an FMLA leave for a scheduled surgery. The employee claimed the surgery was necessary, but the city said it was elective. Result: The judge ruled that a jury should examine the medical evidence.

*Mortgage Insurance—Under the 2010 Tax Relief Act, certain homeowners can continue to deduct their mortgage insurance premiums. This tax break, which was scheduled to expire after 2010, was extended through 2011. Mortgage



insurance is generally required if you make a down payment of less than 20% of the home's price. Caution: The deduction is phased out for high-income taxpayers.

*Doll Wars—Two giant doll-makers are embroiled in a dispute over intellectual property rights. In 2004, Mattel, which owns the Barbie doll franchise, accused MGA Entertainment of stealing the idea for the pouty-lipped Bratz line of dolls. It said the designer who created the Bratz dolls was working for Mattel at the time. In 2008, Mattel was awarded \$100 million and the trademark, but the U.S. Court of Appeals tossed out the verdict. Now both parties have gone back to court.

Questions?

For more information about articles and information contained in the WAW Brief, contact Wharton Aldhizer & Weaver at (540) 434-0316 or send e-mail to info@wawlaw.com.

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