

# **Social Media in the Workplace: The Union's Perspective**

George H. Faulkner

Joseph C. Hoffman, Jr.

Faulkner, Hoffman & Phillips, LLC

---


**Part I:**

**Social Media**

**Working for Unions**

Protecting Concerted Activity and Organizing Attempts.

---



Should employers be permitted to have social media policies prohibiting employees from displaying negative messages about the employer and/or other employees on social media sites, such as Facebook, Twitter, and YouTube?

## **The Issue**

---

- “ 845 million active *monthly* users
- “ 483 million active *daily* users
- “ 425 million *monthly* mobile users
- “ The average user has 130 friends and is connected to 80 pages, events, and groups
- “ Each week more than 3.5 billion pieces of content are shared



## **The Implications- Facebook Usage**

---

- “ Over 200 million accounts
- “ Over 100 million active users worldwide
- “ 50% log in daily
- “ 350 million tweets per day
- “ 50-55% of Twitter users access it by cellphone
- “ 13% of online adults use Twitter



## **The Implications- Twitter Usage**

---



**73%** think that employees share too much online.

**1 in 5** of those surveyed think that they have been negatively impacted by information exposed on social media.

# Social Media in the Workplace


---



Report released January 2012 by the National Labor Relations Board's Acting General Counsel discussed several recent cases where the NLRB found provisions in employers' social media policies to be in violation NLRA Section 8(a)(1).

# NLRB on Social Media Policies

---




Section 7 of the NLRA creates a right for private-sector employees who are covered by the NLRA (union or non-union), to self-organize, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.ö National Labor Relations Act §7, 29 U.S.C. §157

## **Implicated NLRA Sections**

---






Section 8(a)(1) of the NLRA prohibits an employer from engaging in conduct that ÷interfere[s] with, restrain[s], or coerce[s] employees in the exercise of the rights guaranteed in Section 7.ö National Labor Relations Act § 8(a)(1), 29 U.S.C. § 158(a)(1)

## **Implicated NLRA Sections**

### **Cont'd**

---



Whether a work rule would reasonably tend to chill employees in the exercise of their Section 7 rights.  
*Lafayette Park Hotel*, 326 NLRB 824, 825 (1998)

## **Test for an 8(a)(1) Violation**

---



If the rule does not explicitly restrict protected activities, then it will only violate Section 8(a)(1) if:

1. Employees would reasonably construe the language to prohibit Section 7 activity;
2. The rule was promulgated in response to union activity;
3. The rule has been applied to restrict the exercise of Section 7 rights.

## **Test for an 8(a)(1) Violation Cont'd**

---

An activity is concerted when an employee acts "with or on the authority of other employees and not solely by and on behalf of the employee himself," and includes "those circumstances where individual employees seek to initiate or to induce or to prepare for group action."

*Meyers Industries (I & II)*

## **Concerted Activity Standard**

---



- “ A negative post about a supervisor on an employee’s Facebook page that drew support and comments from coworkers.
- “ Photos with negative comments about the employer on a personal Facebook page, where there had been discussion with other employees regarding the event- or working conditions- in the photos.
- “ A negative Facebook post regarding a coworker’s attendance and the employer’s staffing policy.

## **Examples of Concerted Activity in Social Media**

---

# **Part II: Social Media Working Against Unions**

Be careful what you post.

---



- “ Union posted video to YouTube and to the Local Union Facebook page of Union representatives interrogating employees at a nonunion jobsite about their immigration status.
- “ The Acting General Counsel alleged in the Complaint that the Union’s conduct had a reasonable tendency to restrain or coerce employees in exercise of their Section 7 rights.
- “ The ALJ however concluded that the Union’s conduct did not violate the Act. On May 15, 2012, the Board adopted the recommended order of the ALJ and dismissed the Complaint.

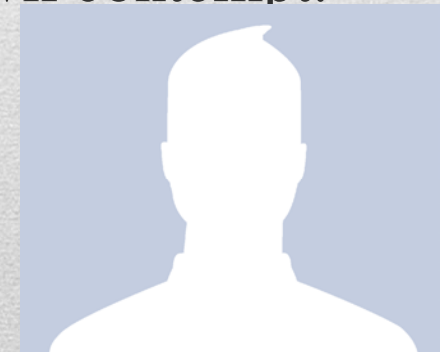
---

**Note:** The Board decision states that it is subject to formal revision before publication in the bound volumes of NLRB decisions.

- “ Union members were enjoined from engaging in unlawful object, picket line violence, and mass picketing among other actions in a Temporary Restraining Order.
- “ Local Union members posted photos to the Union Facebook page of members engaging in mass picketing and blocking of a train.
- “ Court used these photos as part of a showing of clear and convincing evidence to find the Union in civil contempt.

## **Facebook Pictures as Evidence**

---





“ Facebook Privacy Settings: Employer access to unrestricted union Facebook pages, including wall posts, comments, and a photos.



# Final Considerations

---



If you have any questions please contact:

George H. Faulkner

[faulkner@fhplaw.com](mailto:faulkner@fhplaw.com)

Joseph C. Hoffman, Jr.

[hoffman@fhplaw.com](mailto:hoffman@fhplaw.com)

(216)-781-3600

**Thank You**

---