

Private Facebook Message not Concerted Activity Under NLRA

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In this case, an employer terminated a medical office worker based upon a private Facebook message she sent to nine other current and former employees. The message contained derogatory comments about the employer but focused on one supervisor and another returning supervisor she disliked. The employee also expressed a desire to be terminated. No one copied on the message responded directly to the message content at issue. Another employee who received the message gave it to the employer. The employer terminated the author of the message on the grounds that it was obvious the employee no longer wished to work there and disliked the employer and, given these feelings, the employer was concerned about the employee's interactions with patients.

Thereafter, the employee filed a charge claiming that her termination violated section 8(a)(1) of the National Labor Relations Act, which protects concerted employee activity seeking to initiate, to induce, or to prepare for group action or where employees bring truly group complaints to management's attention. The Division of Advice disagreed with the employee and concluded that the Facebook message was not protected because it amounted to mere individual griping. The Division explained that, although the comments referenced the employee's work situation, the comments actually constituted mere personal contempt for a former and returning supervisor and there was no evidence, such as a direct response to the message, that any other employee shared her concerns. The only response regarding the workplace stated that it was getting annoying and bad at work. The Division found this was ambiguous and it could not conclude it related to the earlier comments.

The Division also specifically rejected application of the "inherently concerted" theory, which protects communications about inherently mutual subjects such as wages, because such personal gripes made to other employees do not amount to mutual workplace concerns and the employee did not discuss group action based upon her concerns.

Though this outcome was favorable for employers, it demonstrates the importance of having the necessary facts and evidence to support a termination decision.

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Topics

Facebook, National Labor Relations Act (NLRA), National Labor Relations Board (NLRB), Termination