

State Claims for Wrongful Discharge Related to Facebook post not Preempted by Federal Law

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A nurse posted complaints about high patient-to-nurse ratios at the hospital where she worked on her Facebook page, and asserted that the high ratio negatively impacted patient safety. The nurse was subsequently warned that she should think about her behavior because her actions—whether at work or at home — reflected on the hospital. Fearing termination, the nurse deleted the Facebook page. Five months later, the nurse was terminated for substandard customer service. She sued the employer in Kentucky state court, alleging that she was fired in retaliation for exercising her free-speech rights under the Kentucky Constitution. The hospital sought to remove the lawsuit to federal court on the basis that the nurse’s complaint involved claims for violations of federal law, including the National Labor Relations Act (NLRA), and that those federal laws preempted her complaint. The U.S. District Court for the Eastern District of Kentucky found that the nurse’s claim was firmly rooted in Kentucky state law and that neither the NLRA nor the Labor Management Relations Act preempted the claim. Accordingly, the case was remanded to the state court. Employers should be mindful that an employee’s public complaints about working conditions on social media networks may be protected by various state law protections that vary depending on the state of employment, which could in turn support a claim for wrongful discharge. Consequently, it is important to fully evaluate not only applicable federal laws when making an adverse employment decision, but also applicable state and local laws that may offer additional protections to an employee.

Moore v. Highlands Hosp. Corp., No. 7:11-cv-131 (E.D. Ky. Nov. 17, 2011)

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Topics

Facebook, National Labor Relations Act (NLRA)