



Could This Be You?
 Disciplining an Employee for a Facebook Post that Criticizes a Company Policy

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A Human Resources Bulletin

Recently, we received a call from the human resources director of a client – she was not happy. The company had recently revised its attendance policy at her urging. Soon after, she found out that the personal Facebook page of a company employee contained a not-so-positive “analysis” of the revised attendance policy.

The employee’s Facebook post ridiculed the policy as Draconian and mean-spirited. In addition, several co-workers had responded to the post with similar negative reactions as well as suggestions that their objections to the policy should be raised in the company’s next town hall meeting with the CEO. The HR director wanted to “deal with the situation now.” She stated that she had already decided to issue a written reprimand to the employee for the post; however, she was just seeking assurance that the company was not overreacting to the situation.

We explained that disciplining the employee for the post under the circumstances she had described presented a risk. Although the company is an at-will employer and was non-union, the employee likely enjoyed protection from discipline under federal labor law, Section 7 of the National Labor Relations Act.

The employee’s post dealt with a condition of employment – the no-fault attendance policy. The post had attracted the attention of co-workers who had also expressed some concern and agreement with employee’s comments. And, there was evidence that the employees might act together to challenge the policy in a town hall meeting. This conduct added up to protected, concerted activity for which discipline would be unlawful if the employee filed an unfair labor practice charge with the National Labor Relations Board.

Upon further discussion and reflection, the HR director agreed that discipline was not warranted. The individual and group comments on the post probably did not violate any company personnel policy as they were neither defamatory nor disloyal. In fact, the company had implemented the town hall meetings in order to provide

employees with a forum to address workplace concerns such as this.