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Health Care Employer's NLRB Settlement Shows Care Necessary When Using Social Networking & Other Policies Restricting Employee Communications

Health care and other employers should exercise caution when drafting and applying policies regulating employee Facebook or other social networking site, e-mail, or other communications to avoid violating Federal labor laws protecting worker organization rights, as illustrated by a February 7, 2011 settlement agreement reached between a Connecticut ambulance service operator and the National Labor Relations Board (NLRB).

According to the NLRB, Connecticut ambulance service provider American Medical Response (AMR) and the NLRB have agreed to settle a complaint filed on October 27, 2010 that charged AMI with violating the National Labor Relations Act (NLRA) by firing an employee for making derogatory comments about her supervisor on Facebook.

In its complaint against AMR, the NLRB charged that AMR's termination of an employee for making derogatory statements about her supervisor on Facebook violated the NLRA because the employee was engaged in protected activity under the NLRA when she posted the comments about her supervisor, and responded to further comments from her co-workers. The NLRB complaint also charged AMR maintained overly-broad rules in its employee handbook regarding blogging, Internet posting, and communications between employees, and that it had illegally denied union representation to the employee during an investigatory interview shortly before the employee posted the negative comments on her Facebook page.

Under the terms of AMI's settlement with the NLRB[i] approved February 7, 2011, AMI agreed:

- To revise its employee handbook rules to avoid improperly restricting employees from discussing their wages, hours and working conditions with co-workers and others while not at work in violation of the NLRA;
- Not to discipline or discharge employees for engaging in such discussions; and
- Not to deny employee requests for union representation or threaten employees for requesting union representation in the future.

Federal labor law requires that employers tread carefully when dealing with communications by employees concerning terms and conditions of employment and other union or other organizational activity. Existing federal law limits the actions that employers can take to deter or influence employee choices about whether to support or oppose a union certification campaign, to influence the certification of one union representative over another and to deter or penalize employees for communicating about terms and conditions of employment.

Under the NLRA, for instance, employees generally may discuss the terms and conditions of their employment with coworkers. The protections afforded by the NLRB to employee communications about terms and conditions of employment can apply to both unionized and non-unionized employees and workforces. Subject to certain reasonable restrictions on communications within the workplace allowed by the NLRA, the NLRA generally restricts the ability of an employer to prohibit employees from communicating about terms and conditions of employment.

Worker awareness of these protections has grown in many workplaces as a result of a new policy requiring employers that are government contractors to post notification of NLRA rights in the workplace implemented by the Obama Administration in May, 2010, aggressive union organization efforts in the health care and certain other industries and other developments. As a consequence, health industry and other employers need to exercise care to avoid violating the NLRA and other federal labor laws when designing, communicating and applying social networking, e-mail, internet, and other policies that regulate on or off-duty communications by employees.

To minimize liability risks under the NLRA, health industry and other employers should consult with qualified labor and employment counsel before discussing or taking other action in response to these activities to minimize risks of unintentionally running afoul of these requirements. Employers should exercise care even if the communication restraint adopted to comply with legally mandated restrictions on communications such as those required by the privacy and security mandates of laws such as the Health Insurance Portability & Accountability Act (HIPAA). While the NLRA generally permits restrictions on communications required to comply with law, health industry and other employers should be prepared to demonstrate the legitimacy of the legal need and their tailoring of restrictions on employee communications to meet that need.

For Advice or Other Information

If your organization needs advice or assistance in responding to labor and employment issues in your health care organization or other health care matters, consider contacting the author of this article, Cynthia Marcotte Stamer at (469) 767-8872 or via e-mail **here**.

Board Certified in Labor & Employment Law by the Texas Board of Legal Specialization, Ms. Stamer is nationally known for her more work, training and presentations, and publications on health industry and other staffing and employment, compensation, regulatory, and other operations, risk management and compliance matters.

Vice President of the North Texas Health Care Compliance Professionals Association, Past Chair of the ABA Health Law Section Managed Care & Insurance Section and the former Board Compliance Chair of the National Kidney Foundation of North Texas, Ms. Stamer has more than 23 years experience advising health industry clients about these and other matters. A popular lecturer and widely published author on health industry and human resources matters, Ms. Stamer also publishes and speaks extensively on health and managed care industry regulatory, staffing and human resources, compensation and benefits, and other operations and risk management concerns. Her insights on these and other related matters appear in the Health Care Compliance Association, Atlantic Information Service, Bureau of National Affairs, World At Work, The Wall Street Journal, Business Insurance, the Dallas Morning News, Modern Health Care, Managed Healthcare, Health Leaders, and a many other national and local publications. For additional information about Ms. Stamer, her experience, involvements, programs or publications, see **here**.

If you or someone else you know would like to receive future updates about developments on these and other concerns, please be sure that we have your current contact information – including your preferred e-mail – by creating or updating your profile **here**. For important information concerning this communication click **here.**

Other Recent Developments

If you found this information of interest, you also may be interested in reviewing some of the following recent Updates available online by clicking on the article title:

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- **OIG Launch of Health Care Fraud "Most Wanted" List Another Sign of Provider Enforcement Risks**
- **Wage & Hour Law Settlements Highlight Rising Wage & Hour Risks of U.S. Employers OCR Requires Rhode Island DHS To Provide Translation, Other Services For Limited English, Other Language Impaired Accommodations**
- **Wage & Hour Law Settlements Highlight Rising Wage & Hour Risks of U.S. Employers**
- **Texas Suspension of Doctor, Pharmacy Highlights Pain Management Prescribing Risks**
- **Supreme Court Ruling Medical Resident Stipend Are Wages Highlights Advisability of Compliance Review**
- **CMS Physician Compare Tool Gives Patients New Info On Physicians & Other Providers**
- **President Signs Long-Sought Red Flag Rule Exemption Into Law**
- **Texas Suspension of Doctor, Pharmacy Highlights Pain Management Prescribing Risks**
- **Managed Care Executive Quotes Stamer On Implications Of Affordable Care Act Claims & Appeals Rules**
- **OIG Shares Key Insights On When Owners, Officers & Managers Face OIG**
- **DEA Cautions Practitioners Must Restrict Delegation of Controlled Substance Prescribing Functions, Urges Adoption of Written Policies & Agreements**
- **HHS announces new tools and resources from the Affordable Care Act to prevent fraud in Medicare, Medicaid and CHIP**
- **Rite Aid Agrees to Pay $1 Million to Settle HIPAA Privacy Case As Office of Civil Rights Proposes Tighter HIPAA Privacy & Security Regulations**
- **CMS Adopts ESRD Facility Prospective Payment System & Proposes New Quality Incentive Program**
- **Revised Joint Commission Medical Staff Bylaw Standard Requires New Collaboration, Other Updates**
- **OIG Special Fraud Alert Targets DME Telemarketing**
- **Health Care Providers Required to Improve Services for Limited English Speakers, Hearing Impaired as HHS Steps Up Enforcement of Federal Discrimination Laws**

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[i] *AMR separately resolved allegations concerning the employee's discharge through a separate, private agreement with the employee.*