

CLEAN UP ON AISLE 7: NLRB Nixes Kroger of Michigan's Online Communications Policy

AUTHOR: SANDBERG PHOENIX

The National Labor Relations Board (NLRB) recently ordered the Kroger of Michigan Company (Kroger) to cease and desist maintaining its online communications policy, because it is “overbroad” and tends to chill employees from exercising their collective bargaining rights.

Anita Granger was given a written warning for violating part of the policy, which barred employees from engaging in online behavior that “would be inappropriate at work and that will reflect negative or inaccurate depiction o[n] our company.”

Granger challenged five provisions of Kroger's policy. The NLRB agreed all violated Section 7 of the National Labor Relations Act (Act), which guarantees employees have the right to self-organize and to engage in other concerted activities for the purpose of collective bargaining. The ruling expands recent precedent considerably restricting employers' ability to limit employees' online activity, even where the conduct takes place on the job.

Another provision required employees who identified themselves as an associate of Kroger to post a disclaimer when expressing opinions online. This could discourage employees from exercising rights guaranteed by Section 7.

As a result, Kroger must revise or rescind parts of the policy, including the disclaimer requirement and prohibitions on:

- The use without permission of the Respondent's intellectual property assets (trademarks, banners, logos);
- Comment on personnel matters or rumors or speculation related to the Company's business plans; and
- Engaging in online behavior that would be inappropriate at work and “that will reflect a negative or inaccurate depiction of our Company” or that includes “disparagement of the Company's (or competitors) . . . executive leadership, employees, strategy and business prospects.”

Employers would be wise to revisit existing policies related to social media and/or online communications.

By Diane L. Regan

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[call_to_action]According to the NLRB, employees might believe that the policy requires them to post a disclaimer any time they “like” a work-related comment on Facebook.[/call_to_action]