

Can you Fire Someone for a Facebook Post?

AUTHOR: SANDBERG PHOENIX

By Courtney Cox

Cox, C. The NLRB recently told an Illinois hotel – NO!

A banquet server at the hotel gathered with other employees in the hallway for a break during a work day that had already lasted 14 hours. The server posted a photograph of the workers on her Facebook page, adding the comment “That’s how we work at TPCC.” The photo made it appear several employees were not working, but the server later testified that she was making a joke about employees who had already worked very hard that day. Several co-workers posted comments on the post.

A few days later the hotel fired the server saying that her Facebook post depicted the company in an unfavorable light and she had therefore breached the rule against disloyalty and disparagement of the hotel’s services. The server filed an unfair labor practice charge (case 13-CA-141609) with the NLRB arguing that the “disloyalty” rule was unlawful. The NLRB agreed, finding the “disloyalty” rule was unlawful because it could reasonably be construed as prohibiting employees from engaging in NLRB-protected activities.

The NLRB also noted that the employer can avoid liability for discipline imposed pursuant to an overbroad rule if it can establish that an employee’s conduct actually interfered with work or employer operations and that the employer acted because of the interference, rather than due to the rule violations.

Since the hotel failed to produce any evidence that the server’s conduct actually interfered with work or hotel operations, the server was awarded back pay and reinstatement.

An important aspect of this case was the finding that some of the “back and forth” between the server and her co-workers on the posting related to their jobs and long hours. Employee complaints about such matters “long have constituted protected activity.” This is protected activity even if the activity is not “concerted.”