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What's on Your Mind? How Facebook Statuses Can Make or Break Litigated Cases

With the popularity of Facebook and the widespread use of social media by employees, it probably comes as no surprise that experts believe a person's Facebook status update offers interesting (and usually obvious) insight about his or her personality. Some people tend to share photos of their travel adventures or culinary skills while others post primarily about the political issues of the day or their kid's latest athletic competition. For the reader, status updates can be interesting, fun and educational. They can also be dangerous traps for the unwary when they consist of unrestrained rants targeting an employer. Certainly, "concerted activities" for the purpose of mutual aid or protection are permitted and protected by the National Labor Relations Act; therefore, posts consisting of complaints concerning working conditions or worker's rights will typically not support termination of the employee. However, before "going off" on an employer on social media, or tolerating the same by your employees, remember that such posts may be viewed as offensive and unprotected, supporting a legal termination.

Last week, the Texas attorney general filed a motion to dismiss a wrongful termination claim brought by a former executive assistant to a judge. The assistant's public Facebook posts called the judge's political affiliates "assholes", and otherwise disparaged the judge and other members of the court. The assistant argued her posts were constitutionally protected free speech, while the judge claimed that the posts went beyond partisan insults and included salacious commentary and images that the judge considered "totally inappropriate" and disruptive to maintaining the credibility and professionalism of the court and its employees. The motion is yet to be heard and involves unique issues given the workplace in question, but the case serves as a good reminder that if employee comments are general bad-mouthing of a boss and are unrelated to working conditions or collective action with coworkers, an employer can discipline an employee for these comments.

In determining whether the risk of being fired is worth the momentary thrill of bashing the boss or supervisor, thoughtful employees will exercise restraint. If a real discussion-worthy issue is involved, employees will want to choose their words and their method of delivery carefully, to ensure the message is not lost in the emotion. And by all means, check your privacy settings regularly.

Questions? Contact Stokes Wagner.