What workers can, can’t say on social media

Much of what you post about job won’t get you fired, but not all

NEW YORK — Bosses can get mad when staffers vent on social media about their jobs, but they may not be able to get even.

When one of Bert Martinez’s employees posted gripes about her job and the boss on Facebook last year, the publicist consulted his lawyer, who said the staffer couldn’t be fired.

“The first lesson I learned is, employees are allowed to vent,” says Martinez, owner of Bert Martinez Communications in Phoenix. “If they’re saying, ‘Hey, it’s hard working here and I find this environment unpleasant,’ you can’t fire them for that.”

The employee quit a week after Martinez learned about the post.

It’s an issue that companies of all sizes have to deal with, but it can be more challenging for smaller companies that don’t have large human resources departments or lawyers on staff to advise them.

What’s protected

Workers who complain about employers on social media can’t be fired if they’re involved in what’s called concerted activity, or joining with fellow staffers to improve working conditions, according to the National Labor Relations Board, the government agency responsible for upholding workers’ rights.

“The NLRB is effectively taking the position that commentary about working conditions on social media is completely protected,” says Henry Perlowski, an employment law attorney with Arnall Golden Gregory in Atlanta.

Owners also can’t resort to other disciplinary measures, Perlowski says. That rules out suspensions, reprimands, pay cuts and promotion denials.

... and what’s not

The NLRB will uphold firings based on posts that damage a company, disparage its products or services or reveal trade secrets or financial information, says Paula Lopez, an employment law attorney with Allyn & Fortuna in New York.

Posts encouraging insubordination aren’t protected, Lopez says, citing a 2014 case that upheld an employer’s decision not to rehire workers who had posted plans to show up at the job and not do work.

Employees can also be fired for posting information about clients or customers. And if their posts are racist, homophobic, sexist or discriminate against a religion, companies should fire workers rather than be seen as tolerating or condoning the employees’ views.

What to do

 Companies should have a written social media policy spelling out what employees can post. It should be specific, with examples of what’s acceptable.

 Review the policy with a lawyer or HR specialist to be sure it wouldn’t violate federal, state or local laws.

 If a staffer has made a negative post about the company, get advice from an employment law attorney or human resources provider before taking disciplinary action.

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