

## Middleberg's Musings

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### When Social Media Is No Longer Social

My mother used to tell me that if you can't say anything nice about someone don't say anything at all. That might be the best possible social media rule of thumb.

I thought it important to pass along [this story](#) that appeared on page one of the business section of The New York Times on 11/9/10.

As a memo from Mark E Spund at Davidoff Malito & Hutcher LLP sums up:

Essentially, the National Labor Relations Board's ("NLRB") issued a complaint alleging that an ambulance service illegally terminated an employee who posted negative remarks about her supervisor on her personal Facebook page. The complaint additionally alleged that the employer's social media, blogging and internet policy was overly broad and violated the National Labor Relations Act ("NLRA") because it prohibited employees from posting disparaging remarks about the company and its supervisors or from depicting the company "in any way" on the Internet without the company's permission.

The Facebook posting drew supportive responses from co-workers and led to further negative comments about the supervisor from the employee.

The NLRB found that the employee's Facebook posting constituted protected concerted activity under the NLRA and that the employer's blogging and Internet policy constituted interference with employees in the exercise of their right to engage in protected concerted activity.

The company is opposing the complaint and an administrative hearing is scheduled for January, 2011.

It behooves all employers to review their Internet and social media policy to determine that restrictions on social network postings about the company are focused on things that the company can legitimately restrict like violations of the company's harassment policy or disclosure of confidential information or trade secrets. An overbroad policy prohibiting all discussions of the company on the social media pages may violate the NLRA.

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