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NEWSLETTER

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Meet Nancy Gray

In a diverse legal career that has spanned over three decades, attorney Nancy Gray has represented hundreds of clients in a variety of civil matters, including labor and employment (management/employee); sexual harassment, discrimination, wrongful termination; commercial,

Employees Who Vent Online: What Can A Business Do To Workers Who Complain on Social Media?

Some people share every moment of their life on Facebook or other social media. It's one thing to post leisure and non-workplace activities, but is it a safe practice to use social media to discuss one's employer or place of employment? Can such exchanges endanger job security and lead to termination?

As with other aspects of workplace oversight, employers institute policies they think are necessary to maintain order and productivity and to minimize or eliminate employee criticism or exposés. The 21st century has seen the evolution of new employer guidelines to deal with the social media phenomenon, and on penalty of termination, employees are often expressly prohibited from making any negative statements or commentary about the company, management, and co-workers.

However, in a recent ruling and advisories, the National Labor Relations Board ("NLRB") has mandated that employers scale down policies that restrict what workers can say online in

contract and business issues.

Among other highlights, Ms. Gray served as Assistant District Attorney in New York, spent seven years with a national law firm working on complex pharmaceutical and medical device cases, and successfully litigated and coordinated cases around the country. She has a unique expertise in matters pertaining to the adulteration of extra virgin olive oil.

Ms. Gray has also lectured and written on a variety of topics, including expert testimony, drug and medical device regulation, sexual harassment, employment practices and child performer issues.

In 1997, she started her own firm, based in Los Angeles.

Having been raised in New York City, Nancy enjoys dramatic, musical and comedy theater as well as pro sports. She is a PADI-certified scuba diver. Among her favorite reading material is Bon Appetit and anything pertaining to criminal behavior and behavioral profiling.

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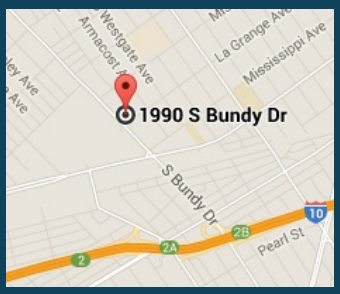
social media settings such as Facebook and Twitter. The NLRB decided that employees have a right to freely discuss work conditions at the office or in social media settings without fear of retribution or retaliation pursuant to § 7 of the National Labor Relations Act ("NLRA").

The rulings by the NLRB apply to almost all private sector employers and carry the message that it is illegal to adopt broad social media policies if they discourage workers from discussing the terms or conditions of their employment. This limited right to communicate with co-workers involves exchanges that aspire to improve wages, benefits or working conditions. However, in more than one case before it, the NLRB, as well as California's Unemployment Insurance Appeals Board, has also found that it is permissible for employers to act against a single worker who vents on social media.

In Hispanics United of Buffalo, Inc., an employee threatened to complain to management that other employees were not working hard enough. In response, one worker posted a message on Facebook asking her fellow co-workers to comment on the threat; some employees responded angrily. The original poster and all of the subsequent commentators were terminated. The NLRB disagreed with the employer's action and ruled that the Facebook posts were "concerted activity" under the NLRA and therefore expressly protected by law.

In contrast, three cases demonstrate that employees do not have free rein to make negative statements about their

Directions



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Attorney Nancy Gray of Gray & Associates, P.C. has more than 30 years of experience providing personalized attention and creative solutions to her clients' legal issues. Whether you need a strong litigator, a labor and employment advocate, or a savvy business law attorney, you can rely on Gray & Associates to provide you with excellent legal representation. Click here to read more.

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employers on social media. In an anonymous case, the NLRB ruled that a posting on Twitter ("What?!?!?! No overnight homicide...you're slacking...stay homicidal, Tucson.") by a reporter for The Arizona Daily Star did not constitute comments about working conditions and was not "concerted activity." According to the NLRB, the termination of the reporter was legal and his job was not reinstated. The NLRB also affirmed the firing of an Illinois bartender that called his customers "rednecks" and said he hoped they choked on glass as they drove home drunk. The NLRB held that his comments were personal venting, and not "concerted activity" to improve wages and working conditions protected under § 7 of the NLRA.

Even in California, complaining on Facebook or other social media about a co-worker may be grounds for termination if the comments are especially incendiary, derogatory or undermine workplace morale. In a 2013 case before the Unemployment Insurance Appeals Board ("UIAB"), a staff nurse who vented on Facebook about being required to work on her birthday and posted violent and profane comments about her supervisor was denied unemployment benefits after her termination. Bernadet Guevarra v. Seton Medical Center et al., No. C 13-2267 CW (N.D. Cal. Dec 02, 2013).

Employees do not have carte blanche to voice whatever they feel about the workplace and must exercise some discretion when posting s on social media. On the other hand, employers cannot effectively silence criticism and may not impose broad or sweeping policies restricting what employees say about the workplace. For your free initial consultation with a knowledgeable employment attorney, call (310) 452-1211 or visit GrayFirm.com today.

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GrayFirm.com - 310.452.1211 - NGray@GrayFirm.com