

Duff on Hospitality Law

Facebook Firings: Not Always Illegal, But a Good Idea?

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The rash of NLRB guidance and new protections for employee social media activity discussed in our previous posts may make employers shy about taking corrective action based on an employee's social media postings. While employers should always be careful in these situations, however, the mere fact that something is posted online does not make it "protected." Recent examples in the news are a great reminder that where a posting is vulgar, offensive, or airs a petty grievance without implicating employees' rights to discuss the terms and conditions of employment, the employer can and in many cases should discipline the employee. Where a posting is less offensive, however, the employer should tread carefully, as unpopular personnel decisions can also draw serious scrutiny.

The best examples of good reactions to bad employee behavior come from fast food restaurants. Burger King recently [terminated an employee](#) who posted a photo of himself standing in two bins of lettuce, with the caption, "This is the lettuce you eat at Burger King." The chain also fired two other employees who were present, including the shift manager. KFC took similar action against mistreatment of its food, [canning an employee](#) for posting a photo of herself coming close to licking a tub of mashed potatoes. Taco Bell [also fired someone](#) for treating a plate of nachos in an unmentionable manner. These employers did the right thing by distancing themselves from these foul acts and demonstrating that they take the quality of their food seriously, even if the employee was just joking or never intended to serve the tainted food.

On the other hand, terminating an employee for a posting that is not technically protected may not always be the best approach, as customers may actually support the employee behind a viral post. A prime example from a few weeks ago comes from an Applebee's restaurant in St. Louis. Despite the restaurant's policy of adding an automatic gratuity to large parties, a patron stiffed her waitress on her tip, writing, "I give God 10%, why do you get 18?" Perhaps understandably peeved, an employee snapped a photo of the receipt and posted it on Reddit. The photo, of course, went viral, the customer got mad, and the employee got fired. While the employer was within its rights to fire this employee, this may not have been the best move. Customers outraged at the stingy patron harshly criticized what they considered unfair treatment of the employee by Applebee's. Online petitions and a Facebook group have emerged in support of the employee, and the significant criticism Applebee's has faced for its handling of the situation has been dubbed a "public relations catastrophe" by more than one

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commentator.

As these examples show, employers have the right and sometimes the responsibility to take swift and decisive action to respond to inappropriate online behavior by an employee. On the other hand, an employee's misstep in handling a social media issue can be just as bad for business as a bad post. Before taking any action against an employee for an online comment, therefore, employers should consult a lawyer and, in some cases, a public relations expert as well.

For more information, please contact [Greg Duff](#).

Tags: Facebook, NLRB, Social Media