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The Minefield: Designing and Implementing Human Resource Policies in the Age of Social Media

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Technology, for better or worse, has invaded every aspect of our modern society. From managing day-to-day appointments to balancing one's checkbook, technology has served to make often mundane tasks more efficient and timely. But, the benefits bestowed by the use of technology also are laden with burdens. The use of technology has posed challenges that society must navigate, and often assimilate into, in order to be productive and to gain an advantage. The area of law and regulation also has needed to evolve in order to address a multitude of issues around the use of technology in general and social media in particular. Areas such as evidence and privacy have posed many questions for legal scholars, organizations, and practitioners, but also have yielded few answers.

Employment law also has had to navigate a minefield of laws and regulations while continuing to manage traditional business functions for the employer. Now, human resource departments across the nation are tasked with managing the traditional employee-employer relationship in light of an ever-changing technological and legal landscape. Organizations across the nation have had to adjust to social media outlets such as Facebook, Twitter, and Instagram to name a few and also have suffered the consequences of instantaneous communication between employees and the media. These same organizations must reconcile the need to protect their goodwill and livelihood, with-in the safeguards provided by the U.S. Constitution and regulatory framework.

The human resource manager, whether operating publicly or privately, must therefore navigate this complex technological environment and the ever-present constitutional and regulatory constraints. To do so, one must design a clear and comprehensive policy that both preserves and protects an employee's speech. The policy must preserve the qualified individual's right to free speech and expression but must also protect the employer's interest in its workforce, protecting proprietary information and accomplishing the goals of the organization. Interestingly, federal courts have offered little guidance in this area; the National Labor Relations Board (NLRB) and the Board's interpretation of the National Labor Relations Act of 1935 (NLRA) has offered the most practical guidance to the human resource manager on effectively designing social media policy. Not only will following these decisions serve to prevent unnecessary litigation, but it also will make the human resource manager's job easier when it comes to discipline and termination of those employees found in violation of stated policy.

It is important to understand the complexity of this area of human resource management. While the U.S. Constitution serves as a basis for much of the discussion in this area of free speech and social media, it is important to understand the limitations that are inherent in our constitutional framework. The constitution, and its first amendment protections, only extends to governmental organizations, or organizations that are extensions of the state (Buchanan, 1997). While the definition of state action has been expanded over the years, the basic principal remains; absent action by the state and no constitutional claim in the area of free speech and private employment law. However, administrative and state laws have carved out protections for private action in an effort to protect the employee's qualified right to free speech when employed by a private organization. Specifically, the NLRB has been empowered through the NLRA to construct administrative laws in order to protect an employee's speech rights in non-profit and private organizations.

However, when the NLRA and NLRB are implicated, it is important to bear in mind that not all employers are regulated by the subsequent board decisions. For example, the NLRA does not apply to local, state, and federal governments. In addition, the NLRA's jurisdiction does not apply to employers who only employ agricultural workers, and to employers and employees covered under the Railway Labor Act (National Labor Relations Board). However, the NLRA covers a large portion of workers in the United States, including those employed in the retail and manufacturing sector, an estimated 31 million employees (Bureau of Labor Statistics, 2014).

These administrative restrictions are a significant development in the area of policy-making and academics in employment law and human resource management. Policy-makers must seek to provide a safeguard against intrusion by organizations into constitutionally and administratively protected areas but also must balance the needs of the overall economy and employment while doing so. Academics are now studying the effects of social-media on morale, work-place safety, and overall economic gains and losses to organizations in terms of efficiency and lost productivity. Over the last several years, cases and controversies have been brought regarding the discipline of employees based on their private social media posts. Specifically, the area of employment implicating the first amendment's right to freedom of speech, and the NLRA prohibition on restricting speech viewed as a "concerted effort" to improve workplace conditions or unionize have been the most often tested in this arena. To design and implement an effective employee-employer related policy, the human resources department must overcome the employees' assumptions of an unqualified right to free speech and social media. In addition, they must design a policy that allows for speech and expression within the regulatory framework while maintaining the delicate balance between that expression and furthering the goals of their employer.

The United States Constitution guarantees the right to voice one's opinions without retribution by government officials (U.S. Const., amend. I). Over the course of several decades, the federal judiciary and administrative law have expanded this right even further, so that this freedom is protected in areas including the public workplace. However, the earlier courts did not, in fact, could not foresee the expanse of social media, and the implications it would have on this freedom and the rights of the employees and their employers. There are now multiple social media outlets, and more being born every day, the foremost and most widely used outlet is Facebook. Not only is it the most widely used - estimates show about 1.35 billion active users (Dewey, 2014) - but it is often the most litigated in the area of free speech and the workplace. However, social media sites such as Instagram and Twitter account for approximately twenty-eight and twenty-three percent of social media usage, with Instagram use doubling in the last three years (Pew, 2015). But, because of the widespread popularity of Facebook, most cases involving free speech and social media arise from use of this particular social media outlet. In fact, 79% of adult internet users who use only one social media site report that Facebook is their sole social media platform (phys.org, 2015.)

In this article, I seek to contrast the constitutional idea of free speech and the regulatory environment found in the workplace. This is achieved by analyzing current developments in social media and employment law. This analysis will include a discussion of the basic assumptions concerning free speech and the subsequent clarifications through case law, constitutional law, and decisions by the NLRB. This article not only discusses the issues inherent in human resource management and our modern society but also will seek to offer guidance and best practices for human resource departments when designing and implementing policy in the area of social media and employee rights. The regulations discussed here are not exhaustive in this area of law. States often provide greater protections for their citizens through state employment and constitutional law then those provided through the U.S. Constitution. In addition, other federal laws, such as the Civil Rights Act, Title VII, and the Federal Stored Communications Act of 1986, can serve as a basis for lawsuits and litigation in the area of free speech and social media. This analysis is limited to the U.S. Constitution, the NLRA, and NLRB decisions due to the breadth of analysis that would be required in order to discuss

all aspects of this area of law when designing policy. Therefore, when designing a social-media policy in the workplace, the human resource manager should also consult federal employment law, as well as state and local laws that may govern this area to ensure proper design and implementation.

In order to design and implement an effective policy in regards to the employee's use of social media, one must first set aside the assumptions that are made concerning the employee's right to free speech and expression. First, the employee must understand that his/her freedom of speech and expression rights are not unfettered when his/her speech pertains to his/her employment or his/her employer and is often dependent on whether the organization is public or private in nature, and whether the speech pertains to fulfillment of job duties. Secondly, the employer must understand that its right to discipline or terminate an employee must also work within the constitutional safeguards and regulatory framework designed to protect employees from unjust termination and retaliation. Third, human resource managers are not wandering aimlessly through a minefield of litigation when it comes to effective policy design and implementation; there is guidance available to them.

The Employee's Qualified Right to Freedom of Speech

When designing policy and disciplining employees, the human resource manager must first ensure that the employee understands that his/her freedom of speech and expression are not unqualified when it involves the use of social media and the workplace. As discussed previously, the federal constitutional protections are dependent on the character of the employment. Public employees are afforded greater protection in this area. Private employers have much greater latitude, and given the nature of employment, specifically "at will" versus contract, private employers are often free to dismiss employees. However, even this right is not unfettered and must not violate statutory and administrative law. But, dismissals of public employees are often construed against that employee and do not protect them when their statements are made pursuant to their official duties (Garcetti v. Ceballos, 2006).

In 2011 and 2012, the NLRB issued memos of guidance in response to a growing number of complaints involving employee dismissal and social media, mainly Facebook, Instagram, and Twitter. Further, in response to a growing number of dismissals due to these social media postings, the NLRB issued a statement pertaining to social-media communications: "An employee's comments on social media are generally not protected if they are mere gripes not made in relation to group activity among employees." Although this guidance applies to all forms of social media, it arose from several cases involving employees' Facebook posts concerning their fellow employees and their employers. While this guidance is not particularly helpful or specific, it does depart from the previous idea that all electronic communication, and specifically, private social media posts, are protected speech.

The NLRA is the regulatory vehicle through which many private claims on the part of discharged employees are brought. The NLRA protects employees' "group or concerted activity" from employer retaliation, and this term is often found in the NLRB's decisions. These types of cases often turn on these two words because this type of activity is protected. In other words, if the employee was engaged in concerted activity to promote workplace rights or safety, then that speech or expression is safe. The NLRA specifically states that an employee cannot be dismissed if his workplace speech involves, "[T]he right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities (emphasis added) for the purpose of collective bargaining or other mutual aid or protection" (NLRA 1935, §7). While the 1935 act could not foresee the future and the advent of social media, the term, "concerted activity", has been expanded to reach all forms of electronic communication through social media outlets.

In 2012, the NLRB decided a case using the expanded definition of concerted activity involving the dismissal of an employee from BMW. The employee posted photos of both the food and beverages served to customers at the dealership in which he worked, commenting that it was not the caliber one would expect

from BMW. Also, the employee also posted photos involving an embarrassing incident that occurred at a Land Rover dealership adjacent to the BMW dealership. The NLRB found the post about BMW was protected speech and rose to the level of concerted activity. It agreed with the employee's claim that the employee was only posting the photos for the benefit of fellow employees and customers. However, his firing in regards to the Land Rover post was found lawful because it was not concerted activity, and the purpose was only to humiliate a competitor (Knauz BMW v. Becker, 2011). In designing policies implicating social media and free speech, and in terminating employees for violations of said policy, the human resource manager must ensure the employee understands his/her right to promote concerted activity but also places limits on posts and the workplace.

Also, further restrictions are placed on the employee's right to free speech and expression in regards to social media if they prevent the public employer from performing his/her duties effectively. In cases involving the ability of the employer to perform his/her duty and the right of an employee's speech, a balancing test is used to determine which priority takes precedent. In 2012, the court found that the interest of the employer outweighed the interest of the employee and, therefore, the employee's dismissal was lawful (LexisNexis, 2014). In this case, a state university deputy police chief posted a photo of the Confederate flag on his personal Facebook page with the phrase, "It is time for a second revolution." He was later demoted and his pay reduced. He sued to claim he had the first amendment right to free speech, and his demotion was unlawful. The court held that his demotion was lawful given the connotation the Confederate flag invokes, and the effect it would have on the goals of the employer, saying that the chief's "[S]peech was capable of impeding the ability of the department to perform its duties effectively" (LexisNexis, 2014).

Further restrictions may be dependent on the nature of the employment. For example, in the area of healthcare, employers must ensure that a patient's personal medical information is protected. This directive is found in the Healthcare Privacy Act (The Healthcare Privacy Act of 1974) and the Health Insurance Portability and Accountability Act of 1996. These laws prohibit medical information from being disclosed by medical personnel, hospitals, and medical providers, whether public or private. Healthcare providers must keep these laws in mind when designing an effective employee social media policy. This directive has been broadly construed by employers, for example, one hospital employee was dismissed after she used Twitter to voice her opinion that the state's governor had received preferential treatment (Cain, 2011).

Further, employees can be dismissed if their private social media posts reflect on their employers. The reputation of an organization is often paramount, especially in areas of commerce where there is high competition for customers. The "faces" of the organization are now related to the electronic communication between the organization and consumer, for better or worse. Consumers may now tweet, message, and post both positives and negatives relating to a particular organization. In addition, an employee's connection to an organization, whether express or implied, can lead to a negative effect on that organization. Jeff Cain (2011) cautions that while face-to-face conversations may be harmless, that same conversations may be judged differently online, something that an employer must bear in mind.

This implication can be implied, even from photographs posted on the employee's social media page. For example, in 2014, a Nordstrom employee posted a comment on Facebook that advocated, "Every time an unarmed black man is killed, you kill a decorated white officer on his doorstep in front of his family." While this employee did not specifically mention his employer, his profile photo was taken inside of a Nordstrom store and then linked to him individually. Nordstrom came under a firestorm of criticism and found the organization having to distance itself publicly from the employee (Iboshi, 2014).

In a similar case, a bartender in an upscale Chicago nightclub was dismissed after a Facebook post in which she described African-Americans as being apes, animals, incompetent, and disgusting. She was quickly dismissed from the nightclub. Her employer also publicly

dismissed her comments and assured it cliental that her views were not shared by the employer in any way. A strong policy should be designed that serves to prevent implications of this nature from the beginning, rather than repairing the damage after the fact.

The Employer's Qualified Right to Dismissal

The NLRA and recent decisions by the NLRB not only set limitations on the employee in regards to free speech and expression when using social media but also impose restrictions on the employer when designing and implementing social media related policy. The NLRB also has issued decisions regarding the breadth of an employer's prohibition of an employee's social media- related activity. Also, current guidance prohibits employer retaliation against the employee for posts that are considered protected under the NLRA. Such restrictions upon the employer serve to protect an employee's social media posts from undue constraint and illegal termination.

One way that the NLRB has attempted to limit the scope of employers' prohibitions about employee's private posts is by prohibiting employer's policies that attempt to restrict all conduct. Such broad and generalized policies have been found to be far-reaching and adverse to the interest of the employee. In 2010, the NLRB found that Costco, a national wholesaler, and the nation's third-largest retailer, had violated employees' rights by instituting a sweeping prohibition on its employees' use of social media in general and Facebook in particular. The prohibition found in the Costco employee handbook simply stated, "[B]e aware that statements posted electronically (such as to online message boards or discussion groups) that damage the company, defame any individual, or damage any person's reputation, or violate the policies outlined in the Costco Employee Agreement, may be subject to discipline, up to and including termination of employment"(Belicove, 2012).

While it seems clear on its face, the NLRB found that such generalization by Costco could lead a reasonable employee to believe that the prohibition on employee speech related to the company could be extended to protected activity under the NLRA § 7. The activity described in the NLRA is protected, and, therefore, any interference on the employee's expression of such speech is not tolerated and would give rise to an adverse decision against the employer. When designing such policy, the human resource manager should limit the scope of the prohibition to activity that interferes with the employer's purpose, advocates violence, or inflicts harm upon other employees or customers.

Other decisions by the NLRB also have sought to prevent retaliation by employers against employees who take to social media to air grievances and to generate fellow employee support in regards to working conditions, collective bargaining, and unionization, using the concerted activity language to do so. The NLRA Section 7 describes such activity as "concerted" and therefore protected. While the NLRA did not, and, in fact, could not, foresee electronic communication as being included, current NLRB directives have expanded the scope of the NLRA to include such electronic activity. In 2011, the NLRB sided with five former employees against their nonprofit employer after a Facebook post by an employee led to comments relating to the employer. Once the employer learned of the negative post, it dismissed all five employees, citing the Facebook post as the reason. The employees' post and the attendant comments argued that their employer was not doing enough to help their clients, and that some employees were receiving more favorable treatment by the director for various reasons. The NLRB found that the employees' Facebook activity constituted "concerted activity" under Section 7 of the NLRA, and therefore, their termination was an illegal restraint on the employees' free speech rights. Also, the NLRB found the nonprofit's dismissal of the employees retaliatory, and a result of the employees' good faith attempts to improve working conditions and outcomes for their clients. (Jamieson, 2011). Human resource managers should make it clear that any protected speech under § 7 is not prohibited, so long as the questioned speech is concerned with working conditions, union activity, or collective bargaining.

Current Guidance in the Area of Free Speech

While this area of human resource management is new and often contentious, the human resource manager is not without

guidance. The first step would be to take the NLRB memos and decisions and formulate policies that meet the general requirements set forth by the NLRB and the NLRA of 1935. Policies should be designed so that social media activity that the employer wishes to prohibit is described specifically. Such prohibited activity also should be directly related to the employee's duties and responsibilities. NLRB decisions prohibit broad generalizations of prohibited activity, such as those Costco tried to enforce prior to the board's decision in the case discussed above. It is clear that the NLRA has been expanded to include electronic activity, and any prohibition against employee conduct that falls within these activities is suspect.

Policy design also should make it clear to the employee that any concerted activity is protected as long as it relates to the employee's duties and activities. The employee handbook should draw a logical connection between the duties of the employee and any prohibited activity. A discussion with the employee also should include the activities that the NLRA Section 7 protects. It also should be made clear that activity on social media that subverts the employer's purpose or disparages fellow employees will not be tolerated and could result in dismissal. Specific discussions of the employee's social media post and the implication of the employer in illegal activity, or in the violation of protected rights also should be discussed. In order to protect the employer's interests, the human resource manager could implement a form of due process, such as a review by a neutral third party prior to termination that resulted from the social media post.

In addition to the formal guidance provided by the NLRB, NLRA, and case law, there are several examples of third party best-practice guides to assist the human resource manager in designing and implementing policy related to employee use of social media. In this area, a multitude of articles exist that deal with the impact of social media on the human resource manager, and effective ways to monitor and restrict employee participation that is within the law. One example by Ashley Kasarjian (2013), while not exhaustive, does offer comprehensive tips that the human resource manager can use to his or her advantage. Other guidance such as Social Media Blunders in Employment Law (Lexis, 2014) and Social Media and Employment Law (Morgan and Davis, 2013) are also great examples that offer clear and logical guidance when formulating policy.

There are areas of concern in regards to social media and employer policy in which there is no clear guidance or answers, in fact, there is a split of authority regarding the prohibited use of social media on organization-owned equipment but in the employee's own personal time. The consensus of the court's hearing such cases is that as long as the employee's activity is lawful and done in the employee's own time, the activity should not be restricted. Other courts have viewed this narrowly, and in fact, allow an employer to discriminate against activity on company-owned devises, even if it is done on the employee's own time if the employer "(i) doing so is related to a bona fide occupational requirement, (ii) doing so is necessary to avoid a conflict of interest with the employer, (iii) use of the product affects an employee's ability to perform his job duties, and/or [(iv)] the primary purpose of the organization is to discourage the use of the product at issue." (Morgan & Davis 2013)

Policy Design Going Forward

When designing and implementing policy concerning social media in the workplace, be it a public, nonprofit, or private enterprise, the National Labor Relations Act is clear that concerted activity is a protected form of speech. Subsequent NLRB decisions, such as Knauz and Costco have sought to define the term "concerted activity" in light of today's technological advances. These decisions offer significant guidance to the human resource department when designing policies around social media. Based on these decisions and commentary, the human resource manager should keep the following guidance in mind:

1. Policies should not be too generalized or overly broad. The policy should focus instead on specific instances of prohibited conduct and provide specific examples of what is prohibited conduct.
2. The policy also should guide the employee as to what conduct the NLRA, § 7 specifically prohibits an employer from restricting.

3. The policy should devise ways to prevent employer retaliation such as providing a neutral third party to review the evidence and making an objective decision, prior to the employee's termination.

4. The human resource manager should keep abreast of the changes in the law and memos and decisions by the NLRB. Recent decisions may be found at http://www.nlrb.gov/news-outreach/fact-sheets/nlrb-and-social-media.

5. The National Labor Relations Act of 1935 is the governing statute, and while it does not mention electronic employee communication specifically, the National Labor Relations Board has expanded the Act to encompass all forms of social media including Facebook.

6. The National Labor Relations Act of 1935 prohibits the interference by employers on an employee's "concerted activity." Concerted activity includes discussions around pay, unionization, collective bargaining, and working conditions. Working conditions have been interpreted broadly by the NLRB and courts when hearing termination cases.

7. The following restrictions by the employer on the employee have been expressly prohibited by the NLRB and case law and should be consulted and considered when designing policy:

- Prohibiting employee statements that "damage the company, defame any individual or damage any person's reputation";
- prohibiting employees from making "disparaging or defamatory comments about [employer], its employees, officers, directors, vendors, customers, partners, affiliates, or ... their products/services";
- prohibiting "disrespectful" conduct and language that might injure the "image or reputation" of the employer;
- prohibiting employees from posting pictures depicting the employer in any way, including a picture of the employee in a company uniform or the corporate logo;
- prohibiting employees from making disparaging comments about the company or the employee's supervisors, co-workers, or competitors;
- prohibiting employees' use of language or action that is "inappropriate," of a general offensive nature, rude, or discourteous to a client or co-worker;
- prohibiting employees from revealing personal information regarding coworkers, clients, partners, or customers without consent;
- prohibiting employees from identifying themselves as the employer's employee;
- and limiting employee discussions of terms and conditions of employment to discussions conducted in an "appropriate" manner.

In conclusion, the era of social media has opened many doors for both public and private employees, employers, and human resource managers. Hiring, retaining, and disciplining of employees and designing human resource policy was once an arduous and slow process, but the use of technology has, in many respects, made these tasks easier. However, current technology also has made the area of employee-employer relations more tenuous. Social media and the workplace are often a balance of freedom to speak one's mind, tempered with the employer's desire to make a profit and protect its good will.

Even in the area of social media, there are certain assumptions that must be cleared away, and specific guidance that should be utilized before designing a policy that deals with the subject, but certainly before sanctioning an employee for an alleged violation. The employee must understand that the right to free speech when using social media is qualified; it must operate within certain limits imposed by the federal government, courts, and administrative laws and regulations. Likewise, the employer also must work within this same restrictive environment when designing and enforcing a policy. While much of the restrictions placed on public employers are grounded in the first amendment, federal law and regulations also must be kept in mind when designing a social media policy. Privately, organizations are granted more leeway, certainly when employment is "at-will", but the NLRA and decisions by the NLRB also impose restraints on termination of private employees based on social media

and speech. However, there are many sources of guidance available that make this easier for the human resource manager. With a fair and balanced policy and open communication with employees, the human resource manager can reduce the instances of unfair termination, costs to the employee, and costs to the employer.

References

Belicove, M. (n.d.). NLRB slams Costco on social media use policy: What it means for your business. Retrieved September 28, 2012, from http://www.forbes.com/fdc/welcome_mjx.shtml.

Bland v. Roberts (United States Court of Appeals 2013).

Buchanan, G., & Sydney, A. (1997). Conceptual history of the State Action Doctrine: The search for governmental responsibility 34 HOUS. L. REV. 333, 339-40.

Bureau of Labor Statistics. Labor force statistics from the Current Population Survey. Retrieved from http://www.bls.gov/cps/cpsaat18.html.

Cain, Jeff (2011, June 1). Social media in health care: The case for organizational policy and employee education. *American Journal of Health-System Pharmacy.*

Dewey, C. (2014, October 29). Almost as many people use Facebook as live in the entire country of China. Retrieved from http://www.washingtonpost.com/news/the-intersect/wp/2014/10/29/almost-as-many-people-use-facebook-as-live-in-the-entire-country-of-china/.

Duke v. Hamil et al. (2014, February 4). Retrieved from http://docs.justia.com/cases/federal/district-courts/georgia/gandce/1:2013cv01663/194532/24.

Facebook. (2015). Retrieved from https%3A%2F%2Fwww.facebook.com%2Flegal%2FtermsFacebook.

First Amendment. (n.d.). Retrieved April 17, 2015, from https://www.law.cornell.edu/constitution/first_amendment.

Garcetti v. Ceballos, 547 U.S. 410, 2006.

Health Insurance Portability and Accountability Act of 1996 (HIPPA; Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996).

Iboshi, K. (2014, December 24). Nordstrom fires Portland worker over Facebook post. Retrieved from http://www.kgw.com/story/news/local/2014/12/15/facebook-nordstrom-fired/20460823/.

Jamieson, D. (n.d.). Facebook posting led to worker's unfair firing: Feds. Retrieved from http://www.huffingtonpost.com/2011/05/24/facebook-posting-worker-fired_n_866353.html.

Kasarjian, A. (2013, March 01). The social media checklist for companies -- What your clients should do, know, and learn. Retrieved from http://employmentandthelaw.com/2013/03/01/the-social-media-checklist-for-companies-what-your-clients-should-do-know-and-learn/.

Knauz BMW v. Becker (NLRB 2011). State Action and the Public/Private Distinction. *Harvard Law Review.*

Morgan, H., & Davis, F. (2013). Social media and employment law. American Bar Association. Retrieved April 17, 2015, from http://www.americanbar.org/content/dam/aba/events/labor_law/2013/04/aba_national_symposiumontechnologyinlaboremploymentlaw/10_socialmedia.authcheckdam.pdf.

National Labor Relations Act of 1935.

National Labor Relations Board (n.d.). Retrieved from https://www.nlrb.gov.

Pew Research Center. (2015, August 17). Mobile media and social messaging 2015. http://www.pewinternet.org/2015/08/19/mobile-messaging-and-social-media-2015/2015-08-19_social-media-update_02/

Phys.org. (2015, January 13). Facebook still has most users, but other social media sites grow. http://phys.org/news/2015-01-facebook-users-social-media-sites.html

Privacy Act of 1974, 5 U.S.C. § 552a.

Schiffman, L. (2012, April 02). Chicago bartender's racist Facebook rant gets her fired from proof. Retrieved from http://www.huffingtonpost.com/2012/04/02/chicago-bartenders-racist_n_1397232.html.

Social Media Blunders in Employment Law. (2014, March 03). How a Facebook post can turn a case upside down. Retrieved from http://www.lexisnexis.com/legalnewsroom/litigation/b/litigation-blog/archive/2014/03/11/social-media-blunders-in-employment-law-how-a-facebook-post-can-turn-a-case-upside-down.aspx.

United States, National Labor Relations Board. (2012). Costco Wholesale Corp. and United Food and Commercial Workers Union. Washington, D.C.

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