

## HR STORIES FROM THE FRONT LINES Protected Concerted Activity & Social Media

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Erick, the HR manager for A&B Burgers Inc. has just settled in on a Monday morning when he receives a message from Sam, one of his General Managers regarding an employee issue at one of the restaurants. Erick promptly follows up with the Manager to determine the issue and how he can help. Here's what Erick learns.



### THE FACEBOOK RANT

Erick calls Sam to discuss the details. Sam explains the situation that took place over the weekend. Matt, a crew member, came to Sam asking about a raise. Sam explained the process to Matt and that he needed to be employed for 90 days and have a review before the possibility of receiving a raise would be discussed. Matt went on to explain to Sam that he had trip to Las Vegas planned at the end of the month and that he felt he was doing a good job and felt he deserved a raise now not to mention that he could use the money for his trip.

Sam reiterated the process to Matt which he was not happy to hear. Matt went on to say that if wasn't going to be given a raise now then he would just start acting like a "minimum wage employee." When Sam tried to address the comment, Matt walked away. The following day Sam was approached by another crew member, Nick, who is friends with Matt on Facebook, and informed Sam about the rant Matt had posted about his wages and the company. Nick provided a screen shot of the post for Sam's review. Sam read through the post that stated:

"I'm sick and tired of working for minimum wage for A&B Burgers Inc. Sam, my boss, is so unfair! I work my butt off for this company and they can't even reward me with a raise like I asked! I come home smelling like French fries all the time and I am the only one that does the dishes around here! This place sucks! "

### WHAT'S TO "LIKE"?

Sam is stunned and upset by what he reads on the Facebook post. Furthermore, he is surprised by how many "likes" Matt received from other employees. His first instinct is to fire Matt, but he held back and decided to wait and talk to HR. It's a good thing that Sam waited. Erick explains why.

"According to the National Labor Relations Act ("NLRA") situations where two or more employees "take action" with the intent to change or improve their working conditions is considered "protected concerted activity." The protection applies to both union and non-union businesses. It is likely that the NLRB would consider an employee expressing his or her dissatisfaction with their job as protected activity. There are many ways in which employees may "take action." Employees may choose a traditional method such as distributing pamphlets, meeting with co-workers or filing a complaint with a regulatory agency. Similarly, employees may use other methods like posting concerns on Facebook or Twitter. Accordingly, it is recommended that you do not take any adverse action against an employee or group of employees that engage in protected concerted activity. It would be considered unlawful for an employer to discipline, terminate or alter the terms and conditions of an employee because that employee has participated in protected concerted activity." [Understanding and Responding to Protected Concerted Activity](#).

### THE FALL OUT

Erick explains that while Matt's Facebook rant seems unwarranted he does have the right to discuss his dissatisfaction about his wages and work conditions. Additionally, Sam explains that Matt may have posted the rant while on the clock at work. Sam inquires if he could address Matt's violation of using his cellphone while on the clock. Sam also questions if he should address the employees that "liked" the post. Erick explains that the fact other employees condoned the comment could be considered protected concerted activity as well. Erick verifies that Sam can address the cell phone violation however could not hold Matt accountable for his rant on Facebook. Erick also asks that Sam revisit the concerns Matt raised to determine an agreeable solution such as setting up his 90 day review since it was coming up soon and addressing the job duty rotation to ensure it is fair and consistent.

### CONCLUSION

Here is the best way for Managers to respond to protected concerted activity lawfully:

Above all, it is important that as a manager you are very careful when responding to any employee concern that may be viewed as protected concerted activity. Below are some general guidelines to assist you:

- When employee comments or complaints are brought to management's attention, don't simply dismiss the concerns; rather, listen to the employees' issues and see if there is an agreeable solution.
- Take employee comments, suggestions, and complaints seriously. Allowing employees to vent in appropriate ways will help prevent them from complaining in ways that may be more troubling, like on their Facebook or Twitter accounts.
- Do not access an employee's social media accounts. Likewise, do not "friend" an employee on Facebook or follow them on Twitter or any other type of similar social media forum.