

Social Media Policy Provides Legitimate, Nondiscriminatory Reason For Termination

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Much has been written recently about how employers can avoid findings of unfair labor practices in violation of the National Labor Relations Act by having well-written social media policies. It turns out that a good social media policy also can act as a winning defense in discrimination actions.

The United States Court of Appeals for the Fifth Circuit recently upheld a victory for Sam's Club on an employee's discrimination claim. Former employee Virginia Rodriguez sued under the Texas Commission on Human Rights Act claiming that the company had discriminated against her on the basis of her age and national origin and had retaliated against her for previous complaints to management. The United States District Court for the Northern District of Texas held, and the Fifth Circuit affirmed, that Rodriguez's termination was not discriminatory.

Rodriguez's employment was terminated in part for a violation of the company's social media policy, which prohibits employees from making comments that appear "unprofessional, insulting, embarrassing, untrue, [or] harmful" on social media. One of Rodriguez's coworkers hosted a party, for which two employees falsely called in sick so they could attend. When Rodriguez saw photos of the allegedly-sick employees at the party on the host's Facebook page, she posted sarcastic and insulting comments referring to the employees who falsely skipped work.

Although Rodriguez was able to establish her *prima facie* case, the court upheld the termination, holding that the company had established a legitimate, nondiscriminatory and non-retaliatory reason for Rodriguez's termination. Specifically, the court found that Rodriguez's conduct violated the company's social media policy and that Rodriguez admitted to the facts underlying the violation of the policy.

Full text of the opinion can be [found here](#).

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