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Ouch! Harm To Business Or Reputation Policy Ruled Unlawful

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Virtually all companies make efforts to protect their brands and reputations. Many try to further this goal through various employment policies, such as proscribing certain types of posts in social media. There are potential legal issues that can come into play with such policies, however, as illustrated in a recent National Labor Relations Board (NLRB) [advice memo](#).

At issue in the case was a company that maintained a Harm to Business or Reputation policy. That policy stated: “Employees must refrain from engaging in conduct that could adversely affect the Company’s business or reputation. Such conduct includes, but is not limited to: 1. publicly criticizing the Company, its management or its employees...” A charge was filed with the NLRB alleging, among other things, that this policy violated the National Labor Relations Act (NLRA).

The NLRB General Counsel’s office determined the policy violated the NLRA. It explained: “Regarding the policy, by prohibiting any public criticism of the Employer or its management, the Employer is expressly interfering with any appeals to the public in labor disputes, and it does not have a legitimate justification for that kind of total ban.” In other words, the policy unlawfully chilled employees’ rights under the NLRA to comment publicly on workplace matters.

While the Board has been taking a more practical, [employer-friendly view](#) of personnel policies in recent years, this case is another reminder that such

policies still may face challenges by employees and unions under the NLRA.