

NLRB Rules On First Social Media Policy Case; Find Policy Unlawful

September 20, 2012 | [Labor And Employment](#)



On Sept. 7, 2012 the NLRB issued its first decision on a social-media policy, overturning an ALJ decision and finding that Costco Wholesale Corp.'s social-media policy violated Section 8(a)(1) of the NLRA by inhibiting employees' from exercising their rights under Act.

Costco's policy stated, in pertinent part, that statements posted electronically that "damage the Company, defame any individual or damage any person's reputation" could potentially be grounds for discipline, up to and including termination. The ALJ had ruled that employees would not reasonably construe the policy as regulating NLRA protected conduct, but rather would reasonably infer that Costco's purpose in promulgating the rule was to ensure a "civil and decent workplace."

Then on review to the NLRB in Washington, the Board held that the rule, though not explicitly prohibiting Section 7 activity and not specifically in response to any union activity, "clearly encompasses concerted communications protesting [Costco's] treatment of its employees" and, therefore, employees "would reasonably conclude that the rule requires them to refrain from engaging in certain protected communications (i.e., those that are critical of the [Costco] or its agents)." The NLRB also noted that nothing

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in the rule excluded protected activity from its broad prohibitions. This combination of factors led the NLRB to find that the rule had a “reasonable tendency to inhibit employees’ protected activity and, as such, violates Section 8(a)(1)”.

Though this is the first social-media policy case decided by the NLRB, there is little chance that it is the last. Now would be a good time for employers to speak with knowledgeable labor counsel about their social-media policies.

The Costco case can be [found here](#).