

POSTING ON SOCIAL NETWORKING SITES CAN GET YOU FIRED

facebook

Be careful what you say when you're social networking. Two recent cases involve employees posting questionable material on social media sites, which subsequently led to a suspension and a termination. The first case concerns a first-grade teacher in Paterson, NJ. Jennifer O'Brien stated in a Facebook post, accessible to approximately 300 friends, that she was "not a teacher," but rather "a warden for future criminals." O'Brien was suspended, and an administrative law judge ruled that she should be fired. The judge described O'Brien's conduct as "inexcusable" but particularly disconcerting in a city such as Paterson, which faces troubles with poverty and violence. The judge wrote that the suspended teacher "has demonstrated a complete lack of sensitivity to the world in which her students live. The sentiment that a six-year-old will not rise above the criminal element that surrounds him cuts right to the bone." The judge further expressed her belief that O'Brien might be reinstated as a teacher in a city other than Paterson if she were to undergo sensitive training. "Thoughtless words," according to the judge, could have a negative impact on the relationship between home and school, so the school's ability to function in the community took precedence over a right to freedom of speech. The judge's ruling will now go to the state education commissioner for a final decision. The other case involves a man and his LinkedIn profile. He was invited to join the website, which networks working professionals, by his supervisor. As his job title, the employee used an offensive term, expletive included. When his employer finally saw the LinkedIn page over a year later, the employee was told that he had violated company policy and was terminated. The former employee brought a charge to the National Labor Relations Board (NLRB), believing that his firing was related to something else. He had discussed with co-workers a lawsuit at another company pertaining to its employees being paid comp time in lieu of overtime. The employee's company had a comparable policy regarding overtime, but none of the employees wanted to inform their employers that the policy may be unlawful. Two months after the company's policy was changed and employees were paid overtime, the employee's LinkedIn site was discovered, a timeframe which the employee considered "suspicious." He believed that, as his profile page was unnoticed for a year, his termination two months after complaining about company policy was proof of the genuine motivation for his firing. Essentially, the argument was that terminating his position was a violation of protected concerted activity, noted in Section 7 of the National Labor Relations Act. His discussions of policies with his fellow employees would fall under concerted activity. The NLRB disagreed that the employee lost his job over conversations with his co-workers. It believed that the company's policy had been violated and accordingly dismissed the employee's charge.

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