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Did You Know? Cases Involving Social Media Must Be Submitted to the NLRB's Division of Advice

Over the last year, Regional Directors of the National Labor Relations Board have initiated several high-profile complaints against employers for policies and conduct related to social media. (See Megan Anderson's article about this trend [here](#).) In these complaints, the NLRB has alleged that employers violated Section 7 of the National Labor Relations Act by maintaining overly broad social media policies or by disciplining employees for protected concerted activity (or both). However, many of the cases have settled, and none have advanced to trial, leaving a trail of uncertainty about the status of the law in this controversial area.

The NLRB appears to be acknowledging the uncertainty in this area of the law. Earlier this spring, the NLRB's Acting General Counsel announced that cases involving social media must be submitted to the Division of Advice (click [here](#) to download). According to the April 12, 2011 memorandum, [c]ases involving employer rules prohibiting, or discipline of employees for engaging in, protected concerted activity using social media, such as Facebook or Twitter, require a decision by the General Counsel. The memorandum states that the larger group of cases in which social media is included require a decision by the General Counsel because of the absence of precedent or because they involve identified policy priorities.

So what does this NLRB policy mean for employers? On the one hand, it may be reassuring for employers to know that the Division of Advice, [which has been a recent voice of reason in the world of social media and labor law](#), is vetting cases. However, it is not clear whether cases involving social media must be submitted to the Division of Advice "because of the absence of precedent" or, in contrast, "because they involve identified policy priorities." To the extent that cracking down on employer discipline for social media postings is a policy priority of the Board, employers would certainly have reason to be concerned by this trend.

For those interested in learning more about the NLRB and social media, I will be speaking on the topic at an [Employment Law Alliance webinar](#) tomorrow (July 20) at 2:00 pm CT. It's not too late to register and learn more about the NLRB's aggressive efforts in the world of social media and beyond!