

Do's and Don'ts: Disciplining for Controversial Social Media Posts

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Recent Controversies



Professor fired over Charlie Kirk post is reinstated and awarded \$500k

The significant payout was authorized by high-ranking state officials, including Tennessee's governor, attorney general and comptroller

Jonathan Mattise

Thursday 08 January 2026 19:11 EST



Prominent US figures face backlash and firings for pro-Palestinian statements

From magazine editors to Hollywood agents, supporters of Palestinians experiencing widespread rebuke

EXCLUSIVE

MACKLEMORE DROPPED FROM ED SHEERAN TOUR AFTER ONSTAGE 'FREE PALESTINE' STATEMENTS



National Labor Relations Act

- The NLRA applies to almost all employees regardless of whether or not they are unionized (exception: supervisors and independent contractors).
- Section 7 of the NLRA grants employees the right to 1) form, join, or assist unions and 2) engage in concerted activity for their mutual aid and protection.
 - Concerted Activity – Two or more employees acting together to try to improve their wages, hours, or conditions of employment, including:
 - Protesting to improve working conditions
 - Criticizing working conditions
 - Discussing wage rates, bonuses, or employment benefits with other employees
 - Complaining about favoritism, specific managers, or policies

Hypothetical

- What if a tweet actually said this:



- What action(s) can the employer take in response to Bruno's tweet? Ask him to take it down? Discipline?

Pier Sixty, LLC



@#%\$&!

- Two days before union election, an employee working as a server at a fundraising event was scolded by the Assistant Director of Banquets about being more attentive to guests at the fundraiser.
- The employee took a break and posted to Facebook that the Director was “such a NASTY MOTHER F***ER don’t know how to talk to people!!!!!! F**k his mother and his entire f***ing family!!!! What a LOSER!!!! Vote YES for the UNION!!!!!!!!!!”
- Employee was fired two weeks later after an investigation

Pier Sixty, LLC

A speech bubble with a tail pointing towards the bottom right, containing the symbols @, #, %, \$, and & in red text.

@#%\$&!

- **NLRB: “The overwhelming evidence establishes that, while distasteful, the Respondent tolerated the widespread use of profanity in the workplace, including the words ‘f**k’ and ‘m*****f***er.’ Considered in this setting, Perez’s use of those words in his Facebook post would not cause him to lose protection of the Act.”**
- **NLRB found the statement protected, concerted activity, and ordered Pier Sixty to reinstate the employee and granted him back pay.**

Political Activity Under the NLRA



- **NLRB General Counsel Memorandum 08-10 – July 22, 2008**
 1. Political advocacy is protected when the subject of that advocacy has a direct nexus to employee working conditions; and
 2. Specific means employed in the advocacy does not render it unprotected.

Deep Dive : ICE Raids and Immigration

- **Example: “By allowing ICE agents to stay in our hotel, the owners are supporting fascists and putting us all in danger.”**
- **What is the nexus to the workplace? Workplace safety**

Deep Dive : Israel/Palestine Conflict

- **Example: “My company does business with those who are responsible for the murder of women and children in Gaza. Every customer should stay away until the owners do the right thing and speak out on the atrocities.”**
- **What is the nexus to the workplace? None. The employer’s choice of business partners is not a term and condition of employment.**
- **But – Be aware of creative arguments citing safety, harassment, or tangential impact on wages through negative public relations.**

NLRB Advice Opinion: Microsoft, July 2026

- **“We reject the Charging Party’s argument that the protest was for mutual aid because the Employer’s relationship with Israel could harm public perception and thus the company’s financial performance, thereby affecting employees’ compensation and benefits. Such a link to terms and conditions is too attenuated to satisfy this element. Moreover, such an argument is inconsistent with precedent holding that efforts to affect the ultimate direction and managerial policies of the business or influence the product fall outside the clause’s scope, notwithstanding that those activities might also have an ancillary effect on a business’s finances.”**
See, e.g., National Dance Institute–New Mexico, Inc., 364 NLRB 342, 349-50 (2016) (pressing employer to better address “needs and desires” of constituent community not protected); Lutheran Social Service of Minnesota, 250 NLRB 35, 41-42 (1980)

Political Posts in the Workplace

Presented By:

Maddie Domenichella

The First Amendment Myth

- **The central misconception:** The First Amendment protects anything employees post about politics.
- **The reality:** It does not.
- The First Amendment restrains government action — not the decisions of a private employer.

Public vs. Private Employers

PUBLIC EMPLOYER	PRIVATE EMPLOYER	APPLIES TO BOTH
• Constitutional free speech protections apply. • Was the employee speaking as a citizen on a matter of public concern? • If so, balance her speech interest against efficient operations. • Due process and tenure procedures may attach first.	• The First Amendment does not restrict employer action. • Limits come from elsewhere (the NLRA, state political-activity and off-duty-conduct statutes, contracts, handbooks) • Backlash is a business pressure, not a legal standard.	• Anti-discrimination and anti-retaliation law. • Consistent enforcement across competing viewpoints. • Viewpoint separated from actionable conduct. • Evidence of a real workplace effect.

"Doxxing": When the Internet Finds the Employee

THE PLAYBOOK

A post goes viral. Activists publish the employee's name, contact the employer, coworkers, and customers, post company phone numbers, coordinate complaints, and encourage boycotts.

FIRST 24 HOURS

01

Preserve the post and full thread

02

Assess physical safety

03

Route inbound contacts to one channel

04

Tell the employee not to engage

PRIVATE EMPLOYER

Free to act once the legal screen clears. The exposure is inconsistency with comparable posts from the other direction.

PUBLIC EMPLOYER

Cannot match that speed. Disruption must be demonstrated, and mob-generated outrage is its weakest form. Notice comes first.

THE TWO CLOCKS

Separate the communications clock from the employment clock.

Viewpoint or Conduct?

The question is not “do we disagree with this?” It is “what did the employee do that we would address regardless of the viewpoint?”

ACTIONABLE CONDUCT

You would address this regardless of the politics.

- Threats or advocacy of violence
- Targeting a coworker, client, or protected group
- Disclosing confidential information
- Posting as the company or trading on its brand

VIEWPOINT ALONE

Not a basis for discipline on its own.

- An unpopular opinion on a candidate or election
- Commentary on a public controversy
- Offensive framing, standing alone
- Customer or coworker complaints about the view

THE OPPOSITE-VIEWPOINT TEST

Would you reach the same outcome if the post took the opposing political view? If not, stop. “Controversial” does not equal discipline.

Hypothetical 1: Violence, Not Politics



Dana R.

@dana_r · Saturday 9:42 PM

I wish a better gunman would go after Candidate X.

*Personal account. Profile bio names the employer.
No mention of the workplace.*

1.2K Likes · 3.4K Reposts · 890 Comments

ANALYSIS

- No First Amendment question — private employer.
- Not concerted activity: no tie to wages, hours, or working conditions.
- Advocacy of violence sits outside what political-activity and off-duty-conduct statutes protect.

WHERE IT LANDS

Discipline is defensible — on the endorsement of violence, not the political view. But consider practical ramifications and precedent setting of disciplining someone for private activity on day off.

Hypothetical 2: The Role Matters



Kelly M., RN

@kellym_rn · Tuesday 7:15 AM

Dr. Fauci paid for the virus to get created and vaccines are killing you.

Personal account. Full name identifiable. Public-facing clinical role.

640 Likes · 1.1K Reposts · 520 Comments

ANALYSIS

- Public-policy opinion — no threat, no named target, no workplace reference.
- But a publicly identifiable, patient-facing clinician contradicting the standard of care creates a patient-trust problem the employer can state without reference to politics.
- Check the jurisdiction; a public hospital adds constitutional balancing.

WHERE IT LANDS

Fact-dependent. Rest it on professional and licensure standards for the role, documented — not disagreement with her politics.

Hypothetical 3: Reading an Oblique Post



Jordan T.

@jordant · Thursday 11:03 PM

Why are yall sad? Your man said it was worth it...

Personal account. Attached: screenshot of Wu-Tang Clan, "Protect Ya Neck."

9.8K Likes · 14K Reposts · 6.2K Comments

ANALYSIS

- No named target, no threat, no workplace reference.
- The screenshot is not the post. Review the thread, the privacy settings, and who actually circulated it.

WHERE IT LANDS

A weak basis for discipline, and one you would have to defend against the opposite viewpoint.

Practical Guidance for Political Posts

DO

- Separate viewpoint from conduct, and discipline only the conduct.
- Apply the opposite-viewpoint test against prior enforcement.
- Document a concrete workplace effect, not a reputational worry.

DON'T

- Assume the First Amendment governs a private workplace.
- Treat outrage as proof of disruption.
- Call political disagreement, standing alone, harassment.
- Announce discipline publicly and amplify the controversy.

THE THROUGH-LINE

Discipline the conduct you can document — and apply it the same way next time.

Protections for Political Speech

Presented By:

Jonathan Orbis

The Post Is Viral. Now What?

Start with the scenario before choosing the outcome.

SCENARIO

An employee posts a controversial political opinion from a personal account, off duty, on a weekend.

Customers identify the employer and demand termination.

- 1 What law applies?
- 2 What is protected?
- 3 What is the workplace impact?
- 4 What response is consistent?

The first legal question is where the employee works.

STATE-LAW RISK MAP

At-Will Is the Starting Point, Not the Finish Line

A personal post may implicate several independent protections.

POLITICAL ACTIVITY

Some states restrict employer control of, or adverse action based on, specified political activity.

LAWFUL OFF-DUTY CONDUCT

Some states protect categories of lawful conduct away from work and during nonworking hours.

SOCIAL MEDIA PRIVACY

State law may separately regulate password demands, compelled access, and account monitoring.

OTHER OVERLAYS

Whistleblower, anti-retaliation, contract, tenure, and public-sector rules may also apply.

First question: Where does the employee work?

THREE STATES, THREE QUESTIONS

The Statutory Text Changes the Analysis

Illustrative examples, not a fifty-state survey.

CALIFORNIA	NEW YORK	COLORADO
Is the employer controlling political activity, and was the employee speaking personally or in a professional capacity? <i>Cal. Lab. Code §§ 1101–1102</i>	Does the post fit one of the statute’s narrowly defined protected activities, and does an exception apply? <i>N.Y. Lab. Law § 201-d</i>	Was the employee terminated for lawful off-duty activity, and is the restriction tied to the employee’s responsibilities or a concrete conflict of interest? <i>Colo. Rev. Stat. § 24-34-402.5</i>

Do not apply one national answer until the employee’s work state is confirmed.

RECENT CASES AND DEVELOPMENTS

When Public Pressure Collides with Procedure

A public employer, a tenured employee, and a rapid response.

WHAT HAPPENED?

A tenured Austin Peay State University professor reposted an article quoting Charlie Kirk. A U.S. senator amplified the post and asked the university to respond.

WHAT FOLLOWED?

The professor was terminated, later reinstated, and reportedly received a \$500,000 settlement. The university acknowledged it had not followed required tenure procedures.

EMPLOYER LESSON

External pressure may create urgency, but it does not eliminate contractual protections, tenure rules, or required process.

Pause before the employment decision, even when the communications response must be immediate.

RECENT CASES AND DEVELOPMENTS

When a Private Post Goes Public

Focus on actual disruption, source, and spread.

A Lee County, Florida teacher posted a controversial comment on a private Facebook account. A third party captured and publicly redistributed it.

EVIDENCE

The administrative law judge found minimal disruption, including limited parent complaints.

CAUSATION

The recommended order emphasized that a third party, not the employee, disseminated the private post.

OUTCOME

The judge recommended rescinding the suspension and termination and awarding back pay and benefits. The recommendation was not a final agency decision.

Measure disruption with evidence. Do not automatically attribute third-party amplification to the employee.

PRACTICAL WRAP-UP

Before HR or Legal Recommends Discipline Under State Law

A repeatable checklist for the viral-post decision.

- | | | |
|----|----------|---|
| 01 | Preserve | Capture the complete post, context, audience, settings, and method of redistribution. |
| 02 | Locate | Identify the employee's work state and applicable off-duty-conduct or political-activity protections. |
| 03 | Classify | Determine whether the post involves protected political activity, lawful recreational or off-duty conduct, or activity undertaken in a professional capacity. |
| 04 | Measure | Document actual operational effects and distinguish the employee's conduct from third-party amplification. |
| 05 | Verify | Confirm contractual protections, required procedures, consistent enforcement, and the factual basis for any action. |

The loudest voices online should not determine the outcome. The governing law and documented rationale should.

Harassment Policies and Enforcement

Presented By:

Emma Spero



When Does an Employer Have a Duty to Respond?

Did the Employer Know or Should Have Known?

SEXUAL HARASSMENT IS AGAINST THE LAW AND VIOLATES COMPANY POLICY

DEFINITION

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

EXAMPLES OF SEXUAL HARASSMENT:

- A supervisor implies to an employee that the employee must sleep with him/her to keep a job.
- A sales clerk makes demeaning comments about female customers to his co-workers.
- An office manager in a law firm is made uncomfortable by lawyers who regularly tell sexually explicit jokes.
- A member of a store greeter and berates a co-worker against their will.
- A secretary's co-workers belittle her and refer to her by sexual or demeaning terms.
- Several employees post sexually explicit jokes on an office bulletin board.
- An employee sends e-mails to co-workers that contain sexually explicit language and jokes.

DID YOU KNOW:

- Sexual harassment is a gender-neutral offense. Men can sexually harass women, and women can sexually harass men. People of the same sex can also sexually harass each other.
- In 2005 the EEOC received 12,025 charges of sexual harassment and 15% of those charges were filed by males.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct **MUST BE UNWELCOME**.
- Retaliating or taking revenge against someone for complaining about sexual harassment or for participating in an investigation of sexual harassment is also against the law.

WHAT SHOULD VICTIMS OF SEXUAL HARASSMENT DO?

1. Say "NO" clearly. Tell the person that his/her behavior offends you. Firmly refuse all invitations. If the harasser doesn't stop and promptly, write a letter asking the harasser to stop and keep a copy.
2. Write down what happened. As soon as you experience the sexual harassment, start writing it down. Write down dates, places, times, and possible witnesses to what happened. If possible ask your co-workers to write down what they saw or heard, especially if the same thing is happening to them.
3. Report the harassment. Use the grievance procedure in your company. Tell your supervisor, your human resources department or some other person with your organization who has the power to stop the harassment. When possible do so in writing as well.
4. Involve your Union. If you belong to a union, you may want to file a formal complaint through the union and get an official to help you through the grievance process.
5. File a discrimination complaint with a government agency: If you

want to file a lawsuit in federal or state court, you must first file a formal sexual harassment complaint with the federal Equal Employment Opportunity Commission (EEOC) and/or your state's fair employment agency. Be careful not to miss deadlines for filing! Under federal law and in many states you may only have 180 days to file a formal complaint.

6. File a lawsuit: You can sue for money damages, to get your job back, and you can also ask the court to make your employer change its practices to prevent future sexual harassment from occurring.

WHAT IS AN EMPLOYER'S RESPONSIBILITY?

1. When an employer receives a complaint or otherwise learns of alleged sexual harassment in the workplace, the employer should investigate promptly and thoroughly.
2. The employer should take immediate and appropriate corrective action by doing whatever is necessary to end the harassment, make the victim whole by restoring lost employment benefits or opportunities, and prevent the misconduct from recurring.
3. Disciplinary action against the offending supervisor or employee, ranging from reprimand to discharge, may be necessary. Generally, the corrective action should reflect the severity of the conduct.

HOW CAN EMPLOYERS HELP TO PREVENT SEXUAL HARASSMENT?

- Develop a written policy dealing with sexual harassment, indicating that sexual harassment is against the law and also violates company policy.
- Develop an effective complaint procedure for workers subjected to sexual harassment. Provide a mechanism for employees to bypass their supervisor when the supervisor participates in the harassment or fails to take proper action. The complaint procedure should encourage a prompt solution to the problem.
- Promptly and effectively respond to sexual harassment complaints. Undertake a complete and confidential investigation of any allegations of harassment and impose appropriate disciplinary action.
- Train all employees and supervisors. (Some states require this.)
- Prevent sexual harassment before it occurs. Circulate or post the company anti-harassment policy and the EEOC rules on sexual harassment. Express strong disapproval of such conduct and tell employees of their right to be free from harassment.

For more information contact the federal agency that enforces sexual harassment laws:
U.S. Equal Employment Opportunity Commission (EEOC)
1601 L Street, N.W.
Washington, D.C. 20507
Phone: 1-800-669-4008
TTY: 1-800-669-6025
www.eeoc.gov

POLICY

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WP-SH-E

- Employer must take prompt remedial action to stop unlawful harassment that an employer knows or should have known about.
 - See 29 C.F.R. section 1604.11 - Sexual harassment.

What Makes a Post "Harassing?"



Social Media Posts CAN Create a Hostile Work Environment

Post Content

- Sexist, racist, anti-Semitic, and/or homophobic
- Often referring to the staff and inmates, in likeness or by name ("the psychologist")
- Suggesting violence & sexual contacts against women
- Degrading, text with guns shooting psychologist

Impact



- "[O]ffsite and third-party conduct can have the effect of altering the working environment in an objectively severe or pervasive manner." (*Okonowsky* at 1180).

Hypothetical: Do you have a duty to respond to any of these social media posts by an employee?

"Everyone knows Abby Smith got the job because she's pregnant and management feels sorry for her."

"Someone should force that psychologist to spend a night in the inmates' unit. Maybe then she'd learn."

"We need better staffing levels and more support for employees."

Hypothetical: Do you have a duty to respond to any of these social media posts by an employee?

"Everyone knows Abby Smith got the job because she's pregnant and management feels sorry for her."

Possibly. It seems directed at a specific employee and indicates harm or intimidation.

"Someone should force that psychologist to spend a night in the inmates' unit. Maybe then she'd learn."

Possibly. Names a specific employee which could make that employee feel attacked or harassed at work, if Abby Smith saw it.

"We need better staffing levels and more support for employees."

Probably not. Discusses general workplace conditions and does not target any persons or groups.

If an employee makes a harassing social media post,

DO

- Listen when an employee tells you they feel unsafe
- Take immediate & corrective action
- Attempt to stop the harassment
- Protect victim's confidentiality & safety
- Timely investigate

DON'T

- Laugh at the post and tell victim it is "funny"
- Allow managers to follow, "like," and interact with the page/posts
- Let management acquiesce to the behavior & posts
 - "Sorry, not sorry"
- Slow-walk the investigation

Best Practices for Social Media Policies



Best Practices for Social Media Policies

Do

- Address legitimate concerns:
 - Trade secrets
 - Client confidentiality
 - Workplace harassment
 - Security concerns
- Investigate consistently
- Preserve the post

Don't

- Ban "negative" or "disparaging" comments about the employer
- Restrict all discussion in the workplace
- Give management unlimited discretion
- Regulate personal & professional accounts the same way

Ask: "What business interest is this social media policy protecting?"

**Hypothetical: You are an HR Manager tasked with creating your employer's social media policy.
Are you choosing either of these?**

"Management reserves the sole and unrestricted right to determine whether any employee social media post is appropriate or inappropriate and may discipline employees accordingly."

"Employees may not post any negative, critical, or disparaging comments about the Company, its management, supervisors, or workplace practices on social media."

Don't

"Management reserves the sole and unrestricted right to determine whether any employee social media post is appropriate or inappropriate and may discipline employees accordingly."

- **Make the policy OVERBROAD**
- **It prohibits virtually all criticism and may result in prohibiting discussion that is protected.**

- **Make the policy OVERLY DISCRETIONARY**
- **It gives management unlimited discretion and no objective standards.**

"Employees may not post any negative, critical, or disparaging comments about the Company, its management, supervisors, or workplace practices on social media."

Hypothetical: You are an HR Manager tasked with creating your employer's social media policy. Are you choosing either of these?

"Employees may not post or share confidential client information, including client identities, records, communications, or information protected by privacy obligations."

"Employees may not use social media to harass, threaten, unlawfully discriminate against, or intimidate coworkers, clients, vendors, or other business contacts."

"Employees may not disclose the Company's trade secrets, proprietary business information, or other confidential commercial information through social media or any other public forum."

Do

- **Make the policy narrowly tailored**
- **Address specific & legitimate business concerns, such as:**
 - "preventing harassment"
 - "safeguarding client information"
 - "protecting workplace safety"

"Employees may not post or share confidential client information, including client identities, records, communications, or information protected by privacy obligations."

"Employees may not use social media to harass, threaten, unlawfully discriminate against, or intimidate coworkers, clients, vendors, or other business contacts."

"Employees may not disclose the Company's trade secrets, proprietary business information, or other confidential commercial information through social media or any other public forum."

Hypothetical: You work for AtlantiCare's HR team.

This is their social media policy:

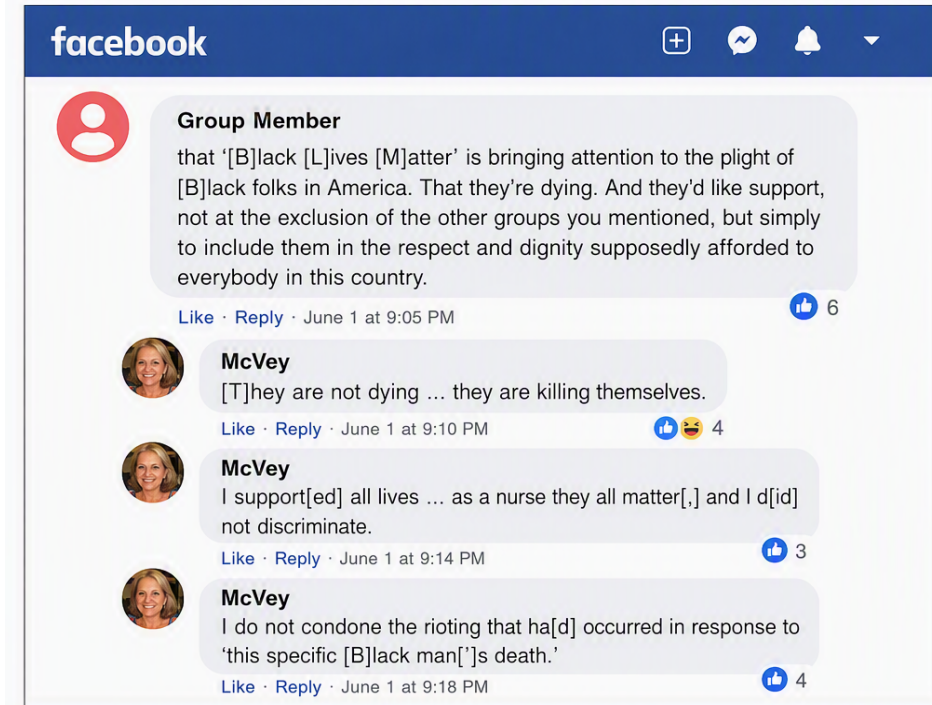
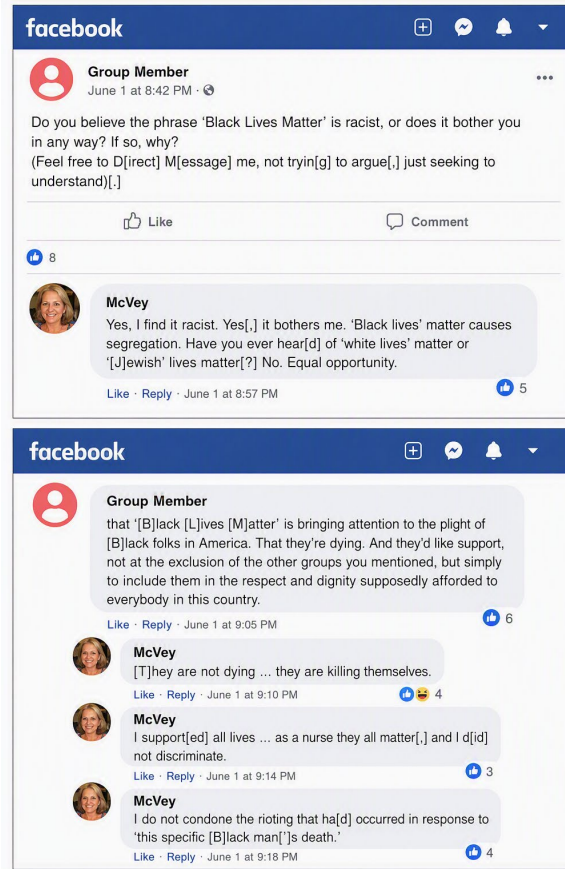
- While AtlantiCare encourages physicians and staff to participate in communication through online social media, it is important for those who choose to do so to understand what is recommended, expected[,] and required when they discuss AtlantiCare-related topics, whether at work or, under certain circumstances, on their own time. AtlantiCare employee use of social media [a]ctivities, inside or outside of the workplace, has the potential to affect AtlantiCare employee job performance, the performance of others, AtlantiCare's brand and/or reputation, and AtlantiCare's business interests.
- Be aware of your association with AtlantiCare. When you identify yourself publicly as being employed by/and or affiliated with AtlantiCare, ensure your profile and related content is consistent with how you wish to present yourself with colleagues and clients. Proper identification includes your name and, when relevant, your role at AtlantiCare.
- When using social media to publicly post a communication[,] respect your audience and your coworkers. AtlantiCare physicians, staff, volunteers, vendors, customers[,] and partners reflect a diverse set of customs, values[,] and points of view. Do not be afraid to be yourself, but do so respectfully. This includes the obvious (no ethnic slurs, personal insults, obscenity[,] etc.) but also proper consideration of privacy and of topics that may be considered objectionable or inflammatory—such as politics and religion.



McVey v. AtlantiCare Med. Sys. Inc., 472 N.J. Super. 278, 283, 276 A.3d 677, 680 (App. Div. 2022)

Hypothetical (con't):

Corporate Director, McVey, makes these Facebook comments on her public Facebook account, which identifies herself as the Corporate Director at AtlantiCare Regional Medical Center. Do her posts violate AtlantiCare's social media policy?



McVey v. AtlantiCare Med. Sys. Inc., 472 N.J. Super. 278, 283, 276 A.3d 677, 680 (App. Div. 2022)

AtlantiCare's Decision

- **AtlantiCare terminated McVey for her posts, which it determined were in violation of their social media policy. The NJ Superior Court agreed.**
- **Employee's interest in publicly posting her remarks = MINIMAL**
 - **Option to send a private, direct message**
- **Posted during height of protest BLM demonstrations**
- **AtlantiCare had a strong interest in protecting the "diverse set of customs, values, and points of view of its physicians, staff, volunteers, customers, and partners."**
- **Opened AtlantiCare to "unwanted and adverse publicity and criticism"**

McVey v. AtlantiCare Med. Sys. Inc., 472 N.J. Super. 278, 283, 276 A.3d 677, 680 (App. Div. 2022)

"[T]he greatest risk lies not in policy language, but in enforcement."

<https://bostonbar.org/journal/employer-rights-risks-and-obligations-in-the-modern-age-of-social-media/>

