

Question:

We've become aware of a social media post by one of our employees in which he complained about his working hours and pay. The post was "liked" by several of his coworkers, one of whom commented "Preach!" and another of whom posted an angry face emoji. Can we discipline these employees for complaining about the company on social media?

Answer from Kim, SPHR, SHRM-SCP:



I would recommend against disciplining the employees for these activities on social media as their speech is almost certainly protected under Section 7 of the National Labor Relations Act. Section 7 protects certain "concerted activity" by employees, which is activity done in concert, meaning more than one employee is involved. This kind of activity is protected if it's related to their terms and conditions of employment (e.g., pay and scheduled hours).

In this case, because the employee complained about their pay and hours in a virtual space and other employees joined in – expressing their agreement through "likes," emojis, and comments – the actions are clearly concerted activity and therefore protected.

I understand, however, that this sort of social media activity by employees can be frustrating. One way to reduce the likelihood that employees will air their grievances on social media is to establish a means for them to do so internally. Employee surveys, comment boxes (whether physical or online), stay interviews, and true "Open Door" policies are all ways to solicit this feedback. The key is to be willing to listen and act on the information you gather. If employees think taking their complaints directly to a manager will end in retaliation, or simply won't lead to any change, they're more likely to keep complaining on the internet.