



CAMPUS COUNSEL

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NLRB Tackles Northwestern University's Social Media Policy for College Athletes

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In an [Advice Memorandum](#) issued on September 22, 2016, the Office of the General Counsel for the National Labor Relations Board (“OGC”) found that Northwestern University’s social media policies applicable to its football players were unlawfully broad (the university modified its social media policy after a complaint had been filed with the NLRB but before the Advice Memorandum had issued).

For the Advice Memorandum, the OGC assumed that the university’s football players were “employees” for purposes of the National Labor Relations Act, an issue that has not been settled definitively as of yet (indeed, the NLRB itself recently declined to exercise jurisdiction over a petition from Northwestern University football players who sought to unionize). As applied to statutory employees, the OGC found that the pre-revision Northwestern University social media policies reasonably could be construed as prohibiting activities protected under Section 7 of the NLRA. Among the phrases the OGC objected to were that football players were responsible for “protecting the image” of the school, that players should refrain from posting “inappropriate, embarrassing” materials, that players should “[b]e positive” when talking about the team, and that no player could “agree to an interview [with the media] unless the interview has been arranged by the athletic communications office.” The university deleted each of these phrases in its re-written policies and replaced them with more specific language, such as discouraging posts of “full or partial nudity . . . sex, racial or sexual epithets, underage drinking, drugs, weapons or firearms, hazing, harassment” and unlawful activity. The OGC approved of the more specific language.

Client Tip: *The Advice Memorandum serves as further guidance to the NLRB’s thinking on social media policies in the workplace, an area of increased focus for the agency over the past few years. As with prior guidance, the NLRB continues to press for more specific, narrowly-tailored social media policies that do not unduly restrict employee communications about work-related matters. Institutions should regularly review their social media policies (both as written and as applied) to ensure that they are not infringing on employees’ rights.*