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NLRB, Social Media and the Right to Complain

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The National Labor Relations Board recently ruled that Chipotle Mexican Grill violated the law when it forced an employee to delete certain posts on his Twitter account. James Kennedy had tweeted some unflattering statements about the Havertown, Pennsylvania restaurant where he worked, including complaints about having to work on snow days and about the hourly wage. In days gone by, Kennedy's tweets may have gone unnoticed, but Chipotle has a national social media strategist, whose job duties include monitoring employees' social media postings. (Depending on the employees, this could be a very interesting job.) The strategist saw Kennedy's tweets and concluded that they violated Chipotle's social media policy, so she contacted the regional manager for Havertown, who then confronted Kennedy with a copy of the policy and asked that he remove the posts. Kennedy ultimately agreed.

The NLRB concluded that Kennedy's tweets qualified as group complaints, as opposed to gripes that only affected him, and were protected under the law. Apparently what neither the strategist nor the regional manager knew was that Chipotle had revised its social media policy the year before. The new policy did not prohibit posts like Kennedy's and was not unlawful. The strategist had used the outdated policy when she concluded that Kennedy had violated the policy, and the regional manager had used it when he confronted Kennedy about the tweets. Therefore, the NLRB found that Chipotle was liable for violations occurring under the old policy.

Compass Point: First, it is important that your social media policy comply with the law, including the National Labor Relations Act. Second, revising your policies to comply with the law serves a limited purpose if management is not aware of which policies are in effect.