



FACT: The signs along the Massachusetts Turnpike reading "x miles to Boston" refer to the distance from that point to the gold dome of the State House.

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We are very pleased to announce that Nina and Justine have both been selected as Top Women of Law by Massachusetts Lawyers Weekly. On October 12, 2012, Lawyers Weekly will celebrate its 5th annual Top Women of Law event, which honors 50 women who are making a difference in Boston's legal community. For information about this award, go to: <http://masslawyersweekly.com/top-women-of-law/>

CATCHING UP WITH OUR CLIENTS . . .

Wal-Mart to the Rescue for Social Media Policies

Social media policies have been under attack by the National Labor Relations Board for being too restrictive of employees' Section 7 rights to engage in "protected concerted activity," which includes the right to discuss wages, hours and other terms and conditions of employment.

You might be surprised to learn that the following statements in a social media policy would be held unlawful by the NLRB:

- "Don't release confidential guest, team member or company information."
- "You should never share confidential information with another team member unless they have a need to know the information to do their job."
- Employees may not "reveal non-public company information on any public site" including "any topic related to the financial performance of the company."

While we have learned a lot about what we cannot say in a social media policy, the Board's decisions have provided very little guidance into what an employer can say. Finally, the Board has now issued a Report that provides specific examples of acceptable language, and has provided Wal-Mart's social media policy as guidance. The key to preparing a lawful policy is to provide examples that clarify what type of behavior is acceptable that would show that the policy will not interfere with employees' protected activity. To be sure, the line between what is acceptable and unacceptable is not always very clear. As an example, here is the confidentiality provision from Wal-Mart's policy that passed NLRB scrutiny:

"Maintain the confidentiality of [Employer] trade secrets and private or confidential information. Trade secrets may include information regarding the development of systems, processes, products, know-how and technology. Do not post internal reports, policies, procedures or other internal business-related confidential communications."

In light of this Report, employers may want to revise their social media policies in their Handbooks now that we have some real guidance from the NLRB.