The Professionals Guild of Ohio

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P.O. Box 7139
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Questions or comments can be directed to the Executive Director.

E-Mail:
cmason@professionalsguild.org

Website:
www.professionalsguild.org

Phone:
614-258-4401 or
800-331-5428

Fax:
614-258-4465

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Issue 2/ SB 5 Campaign Nears the Finish Line!

Election day is just around the corner and we have been working hard to defeat Issue 2/Senate Bill 5. Volunteers have been phone banking, canvassing and talking with their friends and family about the serious consequences Issue 2, if passed, would have on public employees and working people in Ohio. Currently, Ohio AFL-CIO polling on the issue shows at least 70 percent of the public are in favor repealing SB 5 and voting No on Issue 2. This is an amazing achievement and one we hope will be realized when election day results are in.

VOTE!

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NOVEMBER 4 IS THE DEADLINE FOR IN-PERSON EARLY VOTING. NOVEMBER 8 IS ELECTION DAY.

PLEASE, GET OUT TO VOTE, GET OUT TO CANVASS, GET OUT TO TALK WITH YOUR NEIGHBORS, FRIENDS AND FAMILY MEMBERS ABOUT PROTECTING WORKING FAMILIES AND OHIO'S MIDDLE CLASS BY VOTING NO ON ISSUE 2!

How Do You Know They're Lying? - Their Lips Are Moving!

By Amelia Woodward, Esq., PGO Field Representative

If you have been watching the news, or reading up on the campaigns, you have probably heard of Grannygate. We Are Ohio, the group behind the repeal of SB 5, produced a commercial featuring a great-grandmother who states that she is voting No on Issue 2 because the firefighters who saved her grandson and great-granddaughter deserve to have a say at the bargaining table over safety issues on the job, including negotiating for enough firefighters on duty to adequately perform the job. This great-grandmother understands the importance of negotiating for safe staffing levels and vows to vote No on Issue 2.

The opposition (Building a Better Ohio) spliced a portion of the recorded footage and made their own ad, claiming that the great-grandmother's words that fewer firefighters can mean the difference between life and death, should mean a yes vote on Issue 2. The commercial claims that if Issue 2 fails, communities would have to lay off firefighters to pay for the excessive benefits of government employees resulting in fewer firefighters.

The truth is that communities have had to lay-off public employees because their budgets have been decimated by the Kasich cuts in funding to local communities and tax breaks to corporations that is costing Ohio millions of dollars. The outcry over the opposition's deceptive Grannygate ad was loud and clear, and television stations have since pulled it from the airwaves.

We also know that public employees are NOT receiving excessive benefits. The opposition is citing a "study" in one ad that claims public employees receive 43 percent more in wages and benefits than "the rest of us" (presumably referring to private sector employees). This is an outrageously false claim! This supposed study's findings are extremely flawed. For example, it quantifies, among other intangibles, "job security" as a benefit and attributes a 10 percent value to this "benefit." We know from governmental studies, and another recent study released by Economic Policy Institute (EPI) that public employees make roughly 3 percent less in total compensation than their private sector counterparts. The opposition's reliance on the flawed study is irresponsible and an obvious ploy to pit hard working Ohioans against one another.

Social Media and Your Job

By John Campbell-Orde, Esq., PGO General Counsel

Over the past several years, use of social media has grown at an incredibly rapid pace. Sites such as Facebook have millions of users and many people frequently post their thoughts, as well as personal photographs, on such sites. Employees should be aware both of the possible dangers in posting on such sites as well as the legal protections for certain types of postings on social media.

Since social media use has exploded, several public employees have been fired or disciplined for allegedly inappropriate posts on websites such as Facebook. For instance, in 2009 a high school teacher in Georgia was pressured to resign because she had posted photographs on Facebook of herself drinking while on vacation and had also used an expletive on the website. The teacher sued her former employer. In Chicago a teacher is facing possible discipline for posting a photograph of an unusually dressed student on Facebook and then allegedly "leading" others on the website in mocking the photograph.

Employees should use common sense in deciding

what to post on social media sites such as Facebook. In addition to the legal protections discussed below and protection from the just cause article in your collective bargaining agreement, public employees also have some protections when posting on social media website under the first amendment. However, despite these protections employees are best served by generally not discussing work-related matters on Facebook or other social media websites.

If you do choose to discuss work on social media websites, be careful in the language you use and the comments you make, and particularly refrain from commenting about clients whom you serve. Also, last but not least, avoid posting to social media websites during work time. And, be mindful of any posts you make when you are absent from work due to illness or injury.

While the just cause provision in your collective bargaining agreement provides some protection against discipline over certain social media posts, there are lines that, if crossed, could lead to discipline. Before posting on social media sites, you should consider how your employer might react to the post. In addition to the protections contained in your collective bargaining agreement, labor law also provides some protection for certain posts depending on their specific content and tone.

In one case the National Labor Relations Board (NLRB) concluded that an employer violated federal labor law by firing five employees based on their postings on Facebook. The employees felt like they were being unfairly criticized over their work performance by another employee. Consequently, one employee posted this concern on her Facebook page and solicited comments regarding the issue from her coworkers. Both her coworkers and the employee who had been

critical of their performance posted responses on Facebook. When the employer discovered the postings, the employer terminated the five employees who had expressed their dissatisfaction over the criticism they had received from their coworker.

The NLRB concluded that because the Facebook discussion concerned staffing levels and performance issues and was in preparation for an anticipated meeting with the employer's Executive Director, the Facebook discussion was concerted, protected activity and was, therefore, legally protected. The NLRB then concluded that the fact that there was some swearing and sarcasm in the Facebook posts did not result in the posts losing their legal protection. Thus the NLRB concluded that the employer violated the law by firing the five employees over their Facebook posts.

In another case, the NLRB considered whether an employer maintained an illegal internet and blogging policy and whether the employer had illegally fired an employee for posting critical remarks about her supervisor on Facebook. The employee's supervisor asked the employee to write an incident report in response to a customer complaint about her work, denying the employee union representation in the process. The employee subsequently posted critical comments about the supervisor on Facebook. Other coworkers viewed the post and responded with their own critical comments about the supervisor. When the employer learned about the postings, it fired the employee on the grounds that the postings violated the employer's internet policies. The employer's internet policy prohibited employees from making disparaging remarks about the employer or its supervisors, or from depicting the employer in social media without its permission.

The NLRB concluded that the Facebook posts were protected concerted activity, since it is well established that protesting supervisory actions is legally protected activity. The NLRB further concluded that the employee did not lose the legal right to make her Facebook posts simply because she had referred to her supervisor with disparaging terms, such as "scumbag." The NLRB noted that the Facebook postings were not made on company time. The NLRB also concluded, more broadly, that the employer's internet and blogging policy was unlawful. The NLRB reasoned that the policy was unlawful because it blanketly prohibited employees from making disparaging remarks when discussing superiors or coworkers and did not inform employees that the policy did not apply to protected concerted activity such as that described above. Furthermore, the employer's policy prohibiting rude or discourteous behavior was similarly overly broad and, therefore, unlawful.

Not all social media activity is protected under the law, however. Two crucial factors must exist for the conduct to be protected. First, the activity must be concerted, which means that it must involve some fashion of coordination with coworkers. An employee who speaks simply for herself without any involvement of coworkers generally is not engaged in concerted activity. Second, the activity must be protected. In other words, it must relate to terms or conditions of employment.

Lastly, while some abrasive language can be acceptable, there are limits to just how abrasive language can be while still being protected. For example, the NLRB concluded that an employee who made Facebook posts was not legally protected from being fired over the posts because she did not discuss her Facebook posts with her coworkers and none of her coworkers responded to her Facebook posts. Furthermore, she was not preparing for or inducing any group action and her posts were not spurred by concerns shared by other coworkers. The NLRB further implied that even had the posts been concerted activity they would not have been protected because they did not concern terms or conditions of employment. The employee was fired after having a Facebook conversation with two non-work friends in which she stated that working in a mental institution overnight was spooky and that one mentally disabled client was "cracking her up."

"135,817 Facebook friends... and not one of them will cosign a loan for you?"

Cost of Living Continues to Increase

Every month the Bureau of Labor Statistics (BLS) gathers data to determine the rate of inflation. Inflation or the "cost of living" is the increase in how much goods cost over time. The BLS determines the rate of inflation by surveying numerous retailers each month to determine whether the cost of certain goods is increasing and the rate of the increase. In assessing inflation, the BLS focuses on price changes in commonly-consumed goods such as fuel, health-care, food, and clothing. In September 2011, seasonally adjusted inflation was 0.3 percent. While most goods did not increase in price or increased only minimally during that time, the cost of fuel/energy and food increased significantly, thereby driving inflation.

Over the past twelve months, non-seasonally adjusted inflation has been 3.9 percent. This means that in order to have the same buying power as one year ago, employees would need to have their wages increased by nearly four percent over the past twelve months. Unfortunately, due to the economy wages have been increasing minimally at best. When combined with the current inflation rate, the slow growth in wages means that employees are effectively seeing their earnings decrease as their wage increases fail to keep up with the decrease in their buying power caused by inflation. As mentioned previously the main factors behind inflation have been increases in food and fuel/energy costs. During the past twelve months, energy costs have increased by over 19 percent, while food costs have increased by nearly 5 percent.

"To stimulate the economy, people need to start spending more. Raise our prices!"

Ohio Supreme Court Favors Employee in Workers' Compensation Case

By Amelia Woodward, Esq., PGO Field Representative

In Ohio, many non-union private employees and non-union unclassified public employees can be fired from their jobs without cause as long as the reason for the termination is not unlawfully discriminatory. This is commonly known as "at-will" employment. There is, however, one exception to this at-will employment rule and that exception is if the termination was against "public policy." Public policy is a narrow exception to the rule that prohibits employers from terminating employees for engaging in activity protected by law, such as filing a workers' compensation claim. The Supreme Court recently ruled that this public policy exception extends to employees who are terminated based on the **possibility** they might file for workers' compensation benefits, and not just the actual act of filing a claim.

This decision is significant because it creates a clear policy that hadn't been articulated in the law prior to this case. The individual in this case was a machine shop employee who had reported an injury at work. One hour after he reported the injury, but before he filed a workers' compensation claim, the company fired him. Although the employee had not yet filed his workers compensation claim, the timing of the firing is suspect. This case has not concluded, however, since the Supreme Court only decided that the Plaintiff could go forward with his claim on the public policy exception. He must still litigate his claims at trial to prove that he in fact was fired in retaliation for potentially, and subsequently, filing a workers compensation claim.

Should you have any questions about your rights related to workers compensation or any other employment matter, please talk to your attorney or call our offices to speak with a Union attorney.