



## Facebook Firing? NLRB Complaint Alleges Employer Violated Employee's Rights

by Nora Fitzgerald Meldrum, Dinsmore & Shohl. Reprinted with permission.

The National Labor Relations Board's Hartford, Connecticut office recently issued an [unfair labor practice complaint](#) against an employer after the employer fired an employee who posted derogatory comments regarding her supervisor on the employee's personal Facebook page.

(*American Med. Response of Conn.*, NLRB Reg. 34, No. 34-CA-12576, *complaint issued 10/27/10*). In his Complaint, Acting Region 34 Director John S. Cotter claims that the employee's Facebook comments were protected speech under federal labor laws.

The employer, American Medical Response of Connecticut, asked medical technician Dawnmarie Souza to prepare an investigative report after several patients complained about her work. Ms. Souza was upset by this request, and, from her home computer, logged on to her personal Facebook page and posted: "Looks like I'm getting some time off. Love how the company allows a 17 to be a supervisor," referring to the company's code for a psychiatric patient. Ms. Souza also called her supervisor two expletives. Ms. Souza's posts drew favorable comments on Face-

book from her work colleagues. Shortly after she posted her comments, Ms. Souza's employment was terminated. The company claims that her termination was due to patient complaints, not Ms. Souza's Facebook postings.

Mr. Cotter's Complaint alleges that the company violated Section 8(a)(1) of the National Labor Relations Act by interfering with Ms. Souza's right to engage in "protected concerted activity." Federal law protects the right of all employees - regardless of union membership - to discuss the terms and conditions of their employment. This protected speech includes discussions with co-workers that are critical of management and individual supervisors. The Complaint claims that Ms. Souza's comments relating to her supervisor were protected speech relating to the conditions of her employment.

The Complaint also claims that the Company's "blogging and Internet posting policy" is overly broad. The policy prohibits employees from posting pictures of themselves that

(Continued on page 4)

### Inside this issue:

<b>Facebook Firing</b>	<b>1</b>
<b>Tech Tip: Cincinnati Ordinances</b>	<b>2</b>
<b>When to Use Mediation</b>	<b>5</b>
<b>Subscriber Renewals</b>	<b>6</b>
<b>Employment Law Resources on CCH</b>	<b>7</b>
<b>Calendar</b>	<b>8</b>

### Hamilton County Law Library

Hamilton County  
Courthouse  
1000 Main Street  
Room 601  
Cincinnati, OH 45202  
T:513.946.5300  
F:513.946.5252

Open Monday-Friday 8 - 4

[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

# Tech Tip: Check out how to get the City of Cincinnati's Ordinances and Resolutions!

By Julie Koehne, Systems Librarian

The ordinances and resolutions are available online from 1993 to current.

Prior to '93, they are still available by calling the Law Library @ (513) 946-5300 or City Council @ (513) 352- 3246

The screenshot shows the City of Cincinnati website interface. At the top, there is a navigation bar with links: Home, Do Business, Live & Work, Play, Departments, Services & Payments, City Projects. A search bar is located in the top right corner.

Below the navigation bar, there are several sections:

- DO BUSINESS**: SBE Program / Incentives, Bids / Vendors, Government Information, More...
- LIVE & WORK**: Birth / Death Certificates, Human Services, Jobs, Neighborhoods, CPOP, More...
- PLAY**: City Hall Tours, Athletics, Attractions, Events, Parks, Recreation Facilities, More...
- CITY PROJECTS**: Cincinnati Stimulus (ARRA), Road Improvements, Streetcar Information, The Banks, More...

On the right side, there is a "I Want To ..." section with a list of services: Get Winter Weather Information, Request a City Service, Recycle, Find a job with the City, Help with the Neighborhood Enhancement Program, Pay my Water/Sewer Bill, Get a Permit, Visit a Park, Request a birth/death certificate, Bid on a City Contract, Search Available Commercial Properties, Learn about the Duke Energy Center.

Below these sections, there is a "Council" section with a list of links: Home Page, Council Members, Council Calendar, Committee Agendas, Council Media.

At the bottom of the page, there is a "Contact" section with the following information: Melissa Autry, Clerk of Council, 801 Plum St. Rm 308, Cincinnati, OH 45202-1979.

A "Features" section is also visible, with links to: Council Online, Council Committee List, Passed Ordinances and Resolutions, and More...

Two callout boxes provide instructions:

- The first callout box, titled "From the City's 'home page' go to 'City Council's home page' or go straight to <http://cincinnati-oh.gov/council/pages/>", points to the "Council" section.
- The second callout box, titled "Under 'Features' click 'Council Online'", points to the "Council Online" link in the "Features" section.

A third callout box, titled "Select 'Search Council'", points to the "Search Council Items" link in the "Council Online" section.

**Cincinnati City Council Items**

Item Search Document Search Council Home Page

Search For: *Making a selection to any piece of information narrows your search to those specific items. Entering nothing returns all council items.*

Item Number :

*Item numbers are unique. If you know the number no other search criteria is needed.*

Calendar Date : On or After  (YYYYMMDD)

Item Type :

Sponsors :

Description : Contains All

Ordinance/Resolution :

*You must enter 4 numbers. The asterisk "\*" can be used if you are not sure of the number.*

Mayor Vetoes :  YES

Field Connector : AND

Order By: Document #  Descending

Options: Results Per Page: 10

[Find Council Items](#)

On the "Council Items" page enter the ordinance number (note: enter in sets of four. i.e., ord. 416-2003 would be entered as 0416-2003) and click "Find Council"

**Cincinnati City Council Items**

Item Search Document Search Council Home Page

Records 1 to 1 of 1  
Previous 10 Next 10

Item # SORT	Council Date SORT	Description
1 200307730	12/10/2003	ORDINANCE, (EMERGENCY) authorizing the City Manager to enter into agreements for the renting and licensing of market space in Findlay Ma during the rehabilitation and expansion of the Findlay Market House notwithstanding Sections 845-7, 845-13, 845-15, 845-21, 845-29, 845-33, 845-35, 845-37, 845-39, 845-43, 845-45, 845-61 and 845-63 of the Cincinnati Municipal Code.

Records 1 to 1 of 1  
Previous 10 Next 10

[Get Documents](#)

On result screens click "Get Documents" (at right), and then on "ordinance"

**Cincinnati City Council Documents**

Item Search Document Search Council Home Page

Records 1 to 1 of 1

Document #	Description
1 200307730	ORDINANCE

Records 1 to 1 of 1

RDH

RESOLUTION NO. R/2 - 1999

EXPRESSING the support of the Council of the City of Cincinnati for the designation of the Cincinnati-Chicago and Cincinnati-Cleveland rail routes as federal high speed corridors, as recommended by the 1998 Executive Report of the Midwest Regional Rail Initiative.

WHEREAS, the Midwest Regional Rail Initiative is a cooperative and collaborative effort among nine Midwestern states, including Ohio, which evaluated the economic potential of an improved rail transportation option for the Midwest region; and

*(continued from page 1)*

depict the Company without first obtaining permission, and prohibits employees from “making disparaging, discriminatory, or defamatory comments when discussing the Company or the employee’s superiors, co-workers and/or competitors.” According to the Complaint, American Medical Response also allegedly illegally denied Ms. Souza’s request for union representation during an investigatory interview.

According to the Associated Press, the National Labor Relations Board’s Acting General Counsel, Lafe Solomon, compared Ms. Souza’s Facebook posts to discussions around “the water cooler,” observing, “employees have protection under the law to talk to each other regarding conditions at work.” Although this is the NLRB’s first Complaint relating to Facebook comments, Mr. Solomon cautioned that he expects similar issues in the future.

The issuance of the Complaint is not a final determination by the NLRB, and the Complaint has been set for a hearing before an Administrative Law Judge in January 2011. **However, employers who are considering social media or internet policies should ensure that their policies do not have a chilling effect on employees’ rights.**

To determine whether a policy has a “chilling effect” on concerted activity, the NLRB examines: whether the policy explicitly restricts protected activity; whether, from the context of the policy, employees would reasonably construe the policy as prohibiting protected activity; whether the policy has been used to discipline employees who have engaged in protected activity; and whether the policy was promulgated in response to concerted or protected activity. For example, in a December, 2009 Memorandum, the NLRB’s Office of General

Counsel examined Sears Holdings’ social media policy, which prohibited the “disparagement of [the] company’s or competitors’ products, services, executive leadership, employees, strategy, and business prospects.” In its non-binding Memorandum, the General Counsel concluded that this policy, when read as a whole, did not have a chilling effect on concerted activity because: the policy’s prohibition against disparaging the company was placed in the context of other provisions that did not violate employee rights; the employer had not used the policy to discipline any employee for engaging in protected activity; and the policy was not promulgated in response to concerted or union activity.

Employers should avoid enacting policies that broadly ban employee discussions relating to the company. Instead, employers should ensure that any restrictions on employee communications are limited and narrowly tailored to legitimate, business-related areas, such as restricting communications that may violate the company’s discrimination and harassment policies, confidentiality policies, patient privacy policies, or trade secret and intellectual property policies.

#### **For More Information:**

Nora FitzGerald Meldrum is an attorney in Dinsmore & Shohl’s Louisville office. Nora represents public and private sector employers in all aspects of labor and employment law, including matters involving wrongful termination, employment based torts, and employment discrimination. She can be reached at (502) 581-8019 or by email at [nora.meldrum@dinslaw.com](mailto:nora.meldrum@dinslaw.com).

## You & the Legal System: When to Use Mediation

The Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service, will present *You and the Legal System: When to Use Mediation* on Friday, December 10, 2010 at 12:00 noon at the Hamilton County Law Library. This program is free and open to the public. Attorneys are welcome to attend but please note that the session is intended primarily for the non-lawyer citizen. It will last one hour. Please pass the information along to clients and colleagues as desired.

We're pleased to announce that Sherry L. Davis, Cincinnati area family law attorney & divorce mediator, will be the speaker. She will discuss mediation as a means of resolving disputes without a courtroom trial. There will be time for questions from the audience.

Please call 513.946.5300 at the Hamilton County Law Library or email [masweeney@cms.hamilton-co.org](mailto:masweeney@cms.hamilton-co.org) to reserve a seat.

## Fastcase Webinars

The Law Library offers its patrons 24/7 remote access to Fastcase. That's a terrific benefit of your law library subscription but if you're not sure what it is or how to use it well, it's not doing you much good. If you'd like to participate in a short webinar to learn more about using Fastcase, register using the link below. Put "Hamilton County Law Library" as your bar association. Odd, but that's the way it is. There will be many other training opportunities in 2011.

Conducting Legal Research on Fastcase (Overview)

Thu, Dec 9, 2010 12:00 PM - 12:30 PM

<https://www1.gotomeeting.com/register/453969040>

## Subscriber benefits

Are you familiar with the many benefits included in your library subscription? By joining the Hamilton County Law Library, you can:

**Access:** to databases, including **LexisNexis, Shepards', CCH, Hein Online,** and over 70 **Aspen /LOISLaw** treatises in 16 substantive areas

**Connect:** to the wireless network throughout the Law Library, videoconferencing capabilities, and 5 conference rooms, equipped with speaker phones, are available to our subscribers

**Learn:** Free CLE opportunities offered throughout the year: Visit our Law Library Subscriber Services page to find out more. <http://www.hamilton-co.org/cinlawlib/services.html>

**Introduce a colleague to the Law Library!**

## What are we missing?

Please contact the library director, Mary Jenkins, with any suggestions you have to improve our print and electronic resources. 513.946.5300 or [mjenkins@cms.hamilton-co.org](mailto:mjenkins@cms.hamilton-co.org)

## 2011 Subscriber Renewals

It's time to renew your Hamilton County Law Library subscription for the coming year. Here are some answers to frequently asked questions:

**Q: When will I receive my invoice?**

A: We will be mailing invoices to our patrons in early December. Law firm invoices go to our contact person, either the librarian or the office manager, typically.

**Q: Can I pay early? I have money burning a hole in my pocket.**

A: Sure! Anytime! We'll extend your subscription through December 2011.

**Q: May I pay with a credit card?**

A: We're exploring options for credit card payments, but we're not ready yet.

**Q: I haven't been a member for a while. What does it take to join again?**

A: \$100! We'd be glad to have you back. We call members "subscribers" now and the library's name changed in 2010, but you'll find familiar resources and services.

**Q: If I wait to pay until, say, June, can I pay less?**

A: No. We follow a calendar year for this purpose. All of our services are available to patrons throughout the year so we don't prorate the fee (except for brand new subscribers).

**Q: I just passed the bar and haven't used the library before. How do I sign up?**

A: Congratulations! Just complete our [Subscriber Application](#) and mail or bring it in.

**Q: Times are tough. Can I get a break on the fee?**

A: Sorry, but we haven't raised the fee in recent years and our costs have increased, too, while revenue has fallen. Sigh. The annual fee is an incredible deal when you think about the savings to your office as a result of this subscription.

**Q: Why do you charge fees, anyway?**

A: The Law Library is open to the public. We don't charge a daily use fee. However, we offer an array of enhanced services to our subscribers that wouldn't be possible without a fee.

**Q: I have more questions!**

A: Contact Mary Ann Sweeney at 513.946.5300 or [masweeney@cms.hamilton-co.org](mailto:masweeney@cms.hamilton-co.org).

### Public Announcement

The Hamilton County Law Library Resources Board announces its 2011 meeting schedule. All meetings will be held at 1:00 p.m. in the Law Library's Board Room. Members of the public are welcome to attend. Minutes are posted on the web at <http://www.hamilton-co.org/cinlawlib/about/trustees.html>.

January 6, 2011

April 7, 2011

July 7, 2011

October 6, 2011

## Employment Law on CCH

The Law Library has an extensive collection on human resources online through CCH. Any current HCLL subscriber or Hamilton County court or county official may use this material in the Law Library's computer lab. Contact [reference@cms.hamilton-co.org](mailto:reference@cms.hamilton-co.org) or 513.946.5300 for more information or just stop by.

Here is a list of HR / Employment Law materials currently available on our CCH contract:

Accommodating Disabilities  
 Daily Document Updates - Employment Law, Unemployment Insurance  
 EEL Employment Practices Guide Accom Disability Decisions  
 EEL Labor Relations  
 EEL Wage Hours  
 EEOC Compliance Manual  
 Human Resources Management Compensation  
 Human Resources Management Employee Relations  
 Human Resources Management Equal Employment  
 Human Resources Management OSHA Compliance  
 Human Resources Management Personnel Practices  
 Human Resources Management State Employment Laws  
 Journal of Alternative Dispute Resolution  
 Labor Arbitration Awards & Explanations  
 Labor Law Journal  
 NLRB Case Handling Manual

OFCCP - Federal Contract Compliance Manual

PAY Fringe Benefits Tax Guide

PAY Payroll Management Guide w/ Interactive Forms

PAY State Unemployment Insurance Laws & Regs - All States

Payroll, State Employment Law & Pension Trackers

PEN Cobra Guide

PEN Compliance Guide for Plan Administrators

PEN Employee Benefits Management

PEN Pension Plan Guide

PEN Pensions and Deferred Compensation

SAF State by State Workers Comp - All States

SAFE Employment Safety - OSHA

Unemployment Insurance Reports with Social Security (federal only)

## Video Conferencing in Court Proceedings

Many of the Law Library's patrons have used video conferencing to meet with incarcerated clients or to take part in CLEs. The Law Library is also providing video conferencing services for court proceedings, including depositions and hearings. Several Hamilton County Common Pleas judges have welcomed the technology because it provides time and logistics efficiencies. Additionally, several far-flung courts have used our service to take expert witness testimony from witnesses based in greater Cincinnati. The National Center for State Courts recently released a state-by-state survey regarding video conferencing. You may be interested in reading more at <http://bit.ly/b99xtN> and in this USA Today article : <http://usat.ly/cTqH4p>. Any questions about the Law Library's video conferencing capability may be directed to [Julie Koehne](#) or [Mary Jenkins](#).

## Upcoming Events

December 10: You and the Legal System: When to Use Mediation

## December Holidays

The Law Library will be closed:

Friday, December 24 for Christmas.

Friday, December 31 for New Year's.



## December 2010 Law Library Newsletter

- Facebook Firing
- Tech Tip: Finding Cincinnati Ordinances
- Subscriber Renewal Info 2011
- Employment Law Resources on CCH

### INSIDE THIS MONTH

ADDRESS CORRECTION REQUESTED

Hamilton County Law Library  
Hamilton County Courthouse  
1000 Main Street, Room 601  
Cincinnati, OH 45202



