May it Please the Court: Two Legal Cases to Teach Students about Social Media Based Terminations of Employment

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Introduction

Social media is defined as “a group of Internet-based applications that build on the ideological and technological foundations of Web 2.0, and that allow the creation and exchange of user-generated content” (Kaplan & Haenlein, 2010). Facebook accounts for over 1.3 billion active users that visit at least monthly, and Twitter has over 500 million subscribers. Other forms of social media include LinkedIn, Pinterest, YouTube, Myspace, GooglePlus, Tumblr, and Instagram, among dozens of other social media sites (Drouin, O’Connor, Schmidt, & Miller, 2015).

Social media is especially important to college-aged individuals because recent data suggest that 83% of individuals, aged 18 to 29 years, frequent social media sites (Drouin et al., 2015). This statistic confirms the need for universities to teach important issues regarding personal social media usage to students. At the forefront of these issues is how personal social media usage can affect students’ future employment. For example, according to the Society for Human Resource Management, 77% of employers use social networking sites to recruit candidates (Segal, 2014). Also, more than 90% of hiring managers report looking at social media profiles when selecting candidates (Bryant, 2013).

Significant legal issues, however, can arise when human resource (HR) departments use social networking sites to inform HR decisions regarding employee discipline or termination, which some call “Facebook Fired” (Schmidt & O’Connor, in press). In a study by Drouin et al. (2015), 6% of participants lost a job or thought they might lose their job based on their social media posts, and 25% indicated that they had a friend who had lost their job or thought they might lose their job based on their social media posts. As these statistics show, social media–based terminations of employment are a serious modern-day issue in employment.

In this resource review, we will focus on two court cases that management educators can use to teach students about social media–based terminations of employment. These cases were chosen because they can be used in the classroom to discuss the various legal protections that exist for both public and
private sector employees, which include free speech protections and certain protections under the National Labor Relations Act (NLRA). These cases can be used to help shape students’ ethical awareness and decision-making abilities when it comes to personal social media use (Calkins, 2001; Rendtorff, 2015). They also provide a good illustration of how organizations handle situations where the interaction between employment and personal social media usage goes horribly awry.

**Background on the Law of Social Media Termination Cases**

Social media cases are generally divided into two categories, depending on whether they involve public or private sector employees. This initial classification influences which laws that courts will apply to a given case. The legal standard for public sector employees is that the First Amendment protects their speech only if it is made as a citizen and involves a matter of public concern (matters of political, social, or other concern to the community; Drouin et al., 2015). Meanwhile, private sector employees have no meaningful free speech protection since most are at-will workers and can generally be terminated at their employer’s discretion. Some job protection for private sector workers, however, comes from the NLRA. This act permits union and nonunion workers to discuss certain terms and conditions of their employment without fear of employer reprimand (Schmidt & O’Connor, in press).

**Suggested Public Sector Employee Case: Graziosi v. City of Greenville**

One recent case that made headlines is the case of *Graziosi v. City of Greenville Mississippi* (2015; “Graziosi”). Susan Graziosi was a police sergeant in Greenville, Mississippi, who was dismissed after posting statements on Facebook that were critical of her superior officer’s decision not to send representatives to the funeral of a fallen officer. She wrote,

> I just found out that Greenville Police Department did not send a representative to the funeral of Pearl Police Officer Mike Walter, who was killed in the line of duty on May 1, 2012. This is totally unacceptable. . . . Dear Mayor, can we please get a leader that understands that a department sends officers of [sic] the funeral of an officer killed in the line of duty? Thank you. Susan Graziosi.

Graziosi continued to post additional statements in support of her position and in response to others’ comments. She also reposted her comment on the mayor’s
Facebook page and vowed to “no longer use restraint when voicing [her] opinions.” After Greenville’s police chief and mayor learned of her comments, Graziosi was fired. Graziosi sued, claiming that her free speech right had been violated because police officer funerals should be matters of public concern.

The court held that, since Graziosi was speaking as an officer and not as a citizen, her statements could not be a matter of public concern. The court also held that Graziosi’s speech divulged an internal decision of the department, aired a personal gripe that she had about the police chief’s leadership, and “smacked of insubordination.” Thus, the City of Greenville was justified in terminating Graziosi’s employment (*Graziosi v. City of Greenville Mississippi*, 2015).

The Advantages and Disadvantages of Using the Graziosi Case as a Resource

The Graziosi case is a good classroom resource tool not only because it involves a governmental employee but also because it includes a thorough analysis of free speech laws as applied to public sector employees. The Graziosi case was also decided by the 5th Circuit Court of Appeals, so it is a high court decision that is one procedural step away from the U.S. Supreme Court, the highest judicial body in the United States. Of particular note to management educators should be the fact that the 5th Circuit used a balancing test to hold that a public sector employer’s interest in maintaining workplace discipline can trump an employee’s free speech right.

The disadvantage of the Graziosi case is that students often disagree with the outcome of the case. Many feel a sense of injustice because Graziosi’s speech involved the funeral of a fallen officer. Because of this, the Graziosi case can be a good catalyst to discuss the distinction between law and ethics. It also provides students with a good illustration of how precarious the world of social media is for employees and how legal protections, if applicable, are very narrowly tailored by the courts.

When teaching the topic of social media–based terminations, it is helpful to use a second case with the opposite outcome and one where the employee has a separate job classification. The case provided below, *Sanzone & Spinella v. Triple Play Sports Bar* (2014; “Triple Play”) is one that we suggest.

Suggested Private Sector Employee Case: *Sanzone & Spinella v. Triple Play Sports Bar and Grille*

Triple Play Sports Bar is a bar and restaurant that is located in the city of Watertown, Connecticut. In 2011, former Triple Play employee Jamie LaFrance took to Facebook to complain that she owed state income tax. LaFrance posted, “Maybe someone should do the owners of Triple Play a
favor and buy it from them. They can’t even do the tax paperwork correctly!!!
Now I OWE money . . . Wtf!!!”

Two other Triple Play employees interacted with the post. Restaurant cook, Vincent Spinella, “liked” LaFrance’s post. Waitress Jillian Sanzone commented, “I owe too. [The boss is] Such an asshole.” Spinella and Sanzone were both terminated from Triple Play (Triple Play, 2014). The two employees then brought the issue to the National Labor Relations Board (NLRB).

The NLRB is the federal agency that is charged with overseeing the NLRA (Schmidt & O’Connor, in press). The NLRB decided the Triple Play case in favor of the employees, Spinella and Sanzone, and they were reinstated to their jobs. The NLRB held that the employees’ discussion about tax liabilities involved terms and conditions of employment, as protected under the NLRA. The discharged employees were also awarded back pay and money to compensate them for their adverse tax consequences (Triple Play, 2014).

The Advantages and Disadvantages of Using Triple Play as a Resource

The Triple Play case is a good illustration of the law that is applied to private sector social media cases, as well as the legal remedies available to employees who win their cases. Students can also contrast it with the legal standards, analysis, and the outcome of the Graziosi case. Management educators will want to point out that this case illustrates one of the rare exceptions to the at-will employment doctrine since Spinella and Sanzone were able to regain their jobs despite their employer’s objection. It also illustrates the NLRB grievance process and how employers need to be aware of the limited legal protections afforded to private sector employees who discuss their employment on social media.

The disadvantage of this case is that an NLRB decisions can be appealed, and there is currently an appeal of the Triple Play case pending in the 2nd Circuit. Though the legal standard for the judicial review of the NLRB’s decision is hard for the Triple Play owners to overcome, NLRB decisions sometimes do get overturned. Fortunately, court cases are almost always matters of public record and are relatively easy to locate online. Legal databases generally also have a function that allows the user to verify that the case is still good law.

How the Graziosi and Triple Play Cases Can Be Used in the Classroom: Class Discussions, Class Debate, and Suggestions for an Introductory Exercise

The engaging nature of both the Graziosi and Triple Play cases lends itself to highly effective and interactive classroom discussions. Reading, discussing,
and analyzing these cases can sharpen students’ analytical skills and can be useful tools for exploring how the law applies to this subject matter of social media–based terminations. Topics that can be examined during a classroom discussion include an analysis of the facts of each case, whether students agree or disagree with the outcome, students’ perceptions of the fairness of the legal standards, and comparison of the cases with each other. Students can be asked to examine other issues, such as social media policy making and enforcement. For example, students might be asked the question, “If the employers in these cases had a social media policy in place prior to these incidents, might they have avoided litigation?”

The Graziosi and Triple Play cases can also serve as a platform for a rich class debate. Students can be assigned or can self-select whether to defend the employer or the employee’s position and can debate the facts, legal standards, and outcome of each case. Instructors can evaluate the persuasiveness of the argument and offer constructive feedback on elements such as logic, evidence, and arguments the debaters might have overlooked.

Finally, the Graziosi and Triple Play cases can also be used to introduce the topic of social media–based terminations to students. We have found that giving students an introductory handout with a fictionalized version of each case and asking the students, “Can an employee be fired for this?” is an attention-grabbing initial exercise. This exercise is a good way for students to measure their own prior knowledge about the topic, as well as assess their personal perceptions of fairness. The handout also acts as a springboard for the instructor to discuss the actual cases while giving students the answers to the question posed. The instructor may want to add additional scenarios; however, they should all be generally based on actual court cases so that the instructor can have certainty as to the outcome of the question posed to students.

**Conclusion**

In conclusion, by using the Graziosi and Triple Play cases as a classroom resource, students can see direct application of long-standing legal principles, such as free speech and the NLRA, to the new phenomenon of social media–based terminations of employment. Despite any concerns raised in this article, the benefits of using these two cases in the classroom greatly outweigh the drawbacks. Most notably, these cases provide management educators with an interesting and valuable way to illustrate key managerial and employment concepts to students.
References


