From: (b) (6), (b) (7)(C)
To: Kwon, Christy; SM-Region 32, Oakland; Valencia, Hokulani; Parker, D. Criss
Cc: Compton, Kayce R.; Lussier, Richard; Dodds, Amy L.; Fowlkes, Kimberly; Shorter, LaDonna
Subject: Netflix, Inc., 32-CA-315576 (Case Closing Email)
Date: Tuesday, January 6, 2026 3:16:55 PM

The Region submitted this case for reconsideration of whether the Charging Party's social media post raising workplace concerns lost the Act's protection because it included an internal, password-protected link to a meeting at which confidential business information was discussed. We conclude that the inclusion of the link rendered the post unprotected. Furthermore, we find that the Confidential Information and Communications Guidelines are lawful and the Charging Party's discharge, therefore, was not unlawful under *Continental Group, Inc.*, 357 NLRB 409 (2011). This email supersedes prior Advice guidance in this case.

Briefly, the Employer is a global media production and streaming company. The Charging Party had been employed as a (b) (6), (b) (7)(C) until (b) (6), discharge on (b) (6), (b) (7)(C) 2022. On (b) (6), (b) (7)(C) 2022, the Employer convened an all-hands meeting with a few hundred employees. Most of the meeting consisted of presentations by management concerning undisputedly confidential business information. The meeting closed with a question-and-answer session, during which the Employer answered the Charging Party's question raising concerns about demotions, attrition and pay. On (b) (6), (b) (7)(C) the Charging Party responded to a comment thread on a social media website called Blind, which allows users to discuss companies anonymously after verifying that an employee works for the stated industry. Specifically, on this private message board accessible by current and former employees, the Charging Party identified (b) (6), (b) (7)(C) as the question submitter, explained (b) (6), motivations for asking the question, and invited others to review the Employer's answer by posting a password-protected link to the all-hands meeting and identifying the point in the recording at which it was discussed. Although Blind appears to allow former employees to maintain their access to these private message boards, only current employees would have been able to access the recording link due to the password protection, which limits access to users who have current company login credentials. On (b) (6), (b) (7)(C) the Employer's information technology security team became aware of the Charging Party's Blind post and disabled the link. Later that day, the Employer questioned the Charging Party about posting the link and asked (b) (6), (b) (7)(C) o remove it, which (b) (6), did, and apologized for having included the link. Although the Employer indicated that no further follow-up action was anticipated, the Charging Party was discharged the next day. In an email to staff that same day, management explained that the Charging Party had been terminated for posting confidential information inasmuch as sharing the link on an external site violated company policy. The Charging Party provided a handful of examples to the Region where the Employer posted or otherwise disclosed to third parties similar links to confidential business information, but most of these examples concerned employee benefits information.

The Charging Party's discharge was lawful

Where an employee is disciplined for alleged misconduct that is part of the res gestae of Section 7-protected activity and a confidentiality rule is in place, the Board balances the employee's interest in disclosing the information and the employer's legitimate interest in confidentiality in order to determine the lawfulness of discipline pursuant to that policy. *E.g.*, *Beckley Appalachian Regional Hospital*, 318 NLRB 907, 908-09 (1995). Even putting aside the disputed potential for the link to be an "attack vector,"—a potential opportunity for hackers to enter the Employer's systems—we find that the Employer's interest in prohibiting

the link from being shared on third-party websites is sufficient to outweigh the Charging Party's interest in including the link. First, [redacted] had sufficient means to engage [redacted] coworkers regarding terms and conditions without including the link in the post. Second, it would be difficult to prove that the Charging Party did not knowingly or intentionally violate the confidentiality rules since, prior to [redacted] discharge, [redacted] emailed managers apologizing for including the link and stating that, in hindsight, sharing it was unwise. Furthermore, we find the Employer's substantial and legitimate confidentiality interests to be overriding since the all-hands meeting undisputedly covered sensitive business information. The fact that the Employer sometimes shared similar links with third parties does not significantly undercut the substantiality of its confidentiality interests since most of the examples involved employee benefits information, which is not as highly sensitive as the business information shared at the all-hands meeting. Accordingly, the discharge was lawful under a res gestae analysis.

Likewise, [redacted] discharge was lawful under *Continental Group*. As set forth below, the policy under which the Charging Party was discharged—the Confidential Information and Communications Guidelines—is not overbroad.

Since the Blind post was unprotected, and the evidence does not suggest that the termination decision was based on any other activities that retained the Act's protection, the Employer lawfully discharged the Charging Party. Accordingly, the Region should dismiss the allegation, absent withdrawal, that the discharge violated Section 8(a)(1).

The policy entitled "Confidential Information and Communications Guidelines" is lawful

The above policy states, in relevant part:

> As part of our culture of freedom and responsibility, we expect you to make smart, thoughtful decisions about what, how, when and to whom you communicate confidential business information.
>
> **<u>Protecting Confidential Information</u>**
>
> Netflix employees are entrusted with information that is not publicly known, including things like marketing and content strategies and materials, product and device technology, financial data, customer data, business plans and strategies and third-party confidential information, to name a few. Anything you learn, invent, write, develop or create and any other information you obtain while working at Netflix should remain confidential. It is to be used only in doing your job at Netflix. . . .
>
> **<u>External Communications</u>**
>
> Given the breadth and potential sensitivity of information shared among employees, unless you have authorization from Netflix, you should not engage in public discussions, including blogs and other social media, concerning any confidential information obtained while working at Netflix. You also should not initiate contact with or answer questions about Netflix or its business from the press, financial analysts, institutional stockholders, stockbrokers, market researchers, or individual investors. Any inquiries from the media or investors should be referred to the Netflix Public Relations or Investor Relations teams. You should be particularly mindful of

these obligations when speaking on industry panels or while attending events like conferences, especially if press or other media may be in attendance. . . .

Examples of matters that should not be shared outside of Netflix unless and until Netflix has publicly announced the information include:

- Revenue or other financial results or projections
- Metrics, such as contribution margin, cost per hours, etc.
- Number of subscribers
- Any information designated as confidential by a business partner . . .

Applying *Stericycle, Inc.*, 372 NLRB No. 113 (2023), we conclude that the confidentiality provisions are lawful. Although the Protecting Confidential Information section broadly states that "[a]nything you learn . . . and any other information you obtain while working at Netflix" is confidential, a reasonable employee could not interpret the policy, in context, to restrict discussing terms and conditions of employment. Here, employees would reasonably cabin the meaning of confidential information to legitimately confidential business information given the examples provided in that section ("things like marketing and content strategies and materials, product and device technology, financial data, customer data, business plans and strategies and third-party confidential information") as well as the examples given in the External Communications section ("Revenue," "Metrics, such as contribution margin, cost per hours," and "Number of subscribers"). Since employees would reasonably construe confidential information to be limited in this way, we likewise find that the prohibition on "engag[ing] in public discussions, including blogs and other social media, concerning any confidential information obtained while working at Netflix" would not reasonably tend to coerce employees in the exercise of their Section 7 rights.

Likewise, we find that the media-contact provisions would not reasonably tend to chill employees from discussing labor disputes or raising concerted concerns about working conditions with the media. Although the External Communications section broadly prohibits employees from "initiat[ing] contact with or answer[ing] questions about Netflix . . . from the press," employees would reasonably understand from its context that the policy merely bans speaking with the press about business information on behalf of Netflix. The opening sentence of the policy frames it as one encompassing "what, how, when and to whom you communicate *confidential business information*" (emphasis added). Reinforcing this limitation are the examples of business information provided in the Protecting Confidential Information section and the External Communications section (quoted above). Furthermore, the policy directs employees to refer media inquiries to appropriate Employer representatives, which employees would understand to mean that they should not speak on the company's behalf. Since employees do not have a Section 7 right to be a spokesperson for the company on business matters, *see LA Specialty Produce Co.*, 368 NLRB No. 93, slip op. at 4-5 (2019), *overruled on other grounds by Stericycle*, 372 NLRB No. 113, this policy does not infringe on the exercise of rights protected by the Act.

In conclusion, the Region should dismiss all allegations in the outstanding complaint, absent withdrawal.

Please contact us with any questions or concerns.

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