

No Working (Unemployment)

No Talking (Social Media)!

No Fun (Even More Employment Laws)!

Oh My!!

Kim R. Bauman, Esq.

KIM R. BAUMAN

Executive Partner: Wyatt Early Harris Wheeler, LLP
He has been with the Firm over 33 years.

Undergraduate Degree: Duke University, Phi Beta Kappa
Bachelor of Arts (1977)

Law Degree: Wake Forest University, Juris Doctor (1980)

Licensed: All State and Federal Courts in North Carolina and The Fourth Circuit
Court of Appeals

Admitted to Bar: 1980

Member: 18th Judicial District
High Point Bar Association
North Carolina State Bar
North Carolina Bar Association (Labor and Employment Section)
North Carolina Association of Defense Attorneys
Member of DRI (Defense Research Institute)

Honors: In January 2003 was selected by *Business North Carolina* magazine as
one of the top labor and employment attorneys in North Carolina.

Personal: Assistant Scoutmaster, Troop 2 Emerywood Baptist Church
Board Member, Family Service of the Piedmont, Inc.

Past Chairman, Board of Deacons, Emerywood Baptist Church
Past Chairman, Board of Trustees, Westchester Country Day School
Past Board Member, Children's Home Society of North Carolina
Past Board Member, The Open Door Ministries

Kim R. Bauman has over 33 years of experience in civil litigation relating to employment, personal injury, and insurance matters. A significant portion of his practice involves the handling of employment matters, Department of Labor and Equal Employment Opportunity charges, and worker's compensation claims. In addition to drafting handbooks, EEO and employment policies and conducting workplace seminars, he regularly advises and represents businesses, individuals, insurance carriers and their insureds involving all types of employment discrimination and contractual disputes in both the federal and state courts.

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NC UNEMPLOYMENT LAWS

Dramatic Changes in Unemployment Laws

NC UNEMPLOYMENT LAWS

Reason for Change:

- NC has borrowed from the federal government over \$2.5 billion
- Why? The Great Recession, has led to:
 - (1) Employers paying less money into fund
 - (2) More employees seeking unemployment

NC UNEMPLOYMENT LAWS

NC Legislature Passed New Laws Effective

July 1, 2013

- 1. Higher taxes on employers;**
- 2. Reduced payment amounts to the unemployed;**
- 3. Changed the qualifying rules for benefits.**

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Pay Cut	> 15%	

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- **Result**

1. More money from employers to fund (more coming in)
 2. Less employee claims (less money being paid out)
 3. When claim, amount paid is less (less money being paid out)
 4. Ultimately, a financially stable reserve fund
-

SOCIAL MEDIA

**Protected under the First
Amendment or not?**

SOCIAL MEDIA

Answer: It depends!

- oVery fact specific**
- oVery jurisdiction specific**

SOCIAL MEDIA

3 Examples:

1. California case: Nurse Facebooked:

“Thanks to the effin heifer who royally effed up my schedule, not only am I working Mother’s Day, and my anniversary. And this Friday, I will be getting the smallest paycheck I have had in 12 years due to the 17 percent pay cut we had to endure.”

SOCIAL MEDIA

She was fired.

California court upheld firing.



SOCIAL MEDIA

2. 4th Circuit Case: 6 employees “liked” opponent in Sheriff election.

Sheriff re-elected and immediately terminated all six employees.



SOCIAL MEDIA

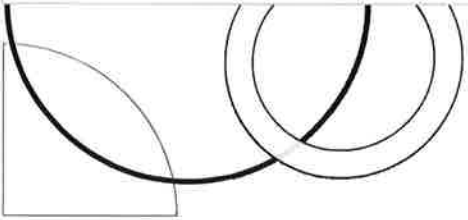
4th Circuit Court held: “Liking” on Facebook is protected speech.



SOCIAL MEDIA

3. \$80,000 Mistake

- Confidentiality Agreement not to discuss settlement of \$80,000 to Plaintiff
- Child of Plaintiff Facebooked
“Mama and Papa Snay won the case against Gulliver. Gulliver is now officially paying for my vacation to Europe this summer. SUCK IT.”



SOCIAL MEDIA

Appeals court held Plaintiff forfeited the \$80,000 settlement.



SOCIAL MEDIA

Takeaway:

Speech on Facebook that is

- Threatening
- Personal about co-worker or boss
- Not protesting a protected activity
 - Wages
 - Illegal conduct (OSHA violation)

Could warrant termination



SOCIAL MEDIA

**If employee is discussing “protected activities”
employer may not be able to terminate**



SOCIAL MEDIA

Do not fraudulently obtain Facebook postings.

OTHER LAWS OF INTEREST

State of North Carolina

Expunged Records:

As of December 1, 2013, no longer able to ask new hires, applicants or current employees about arrests, criminal charges, or criminal convictions that have been expunged

- **Employee/applicant not required to answer interview or application questions**
- **Employer can get warning, then fined**
- **Employee/applicant has no claim**

FEDERAL UPDATES

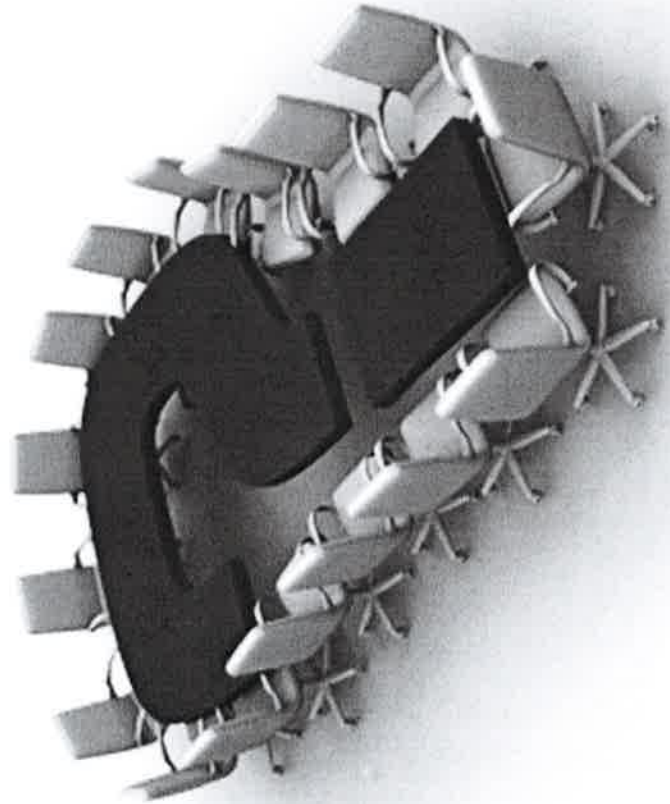
Criminal Record Checks

Okay, but

- (a) Nature and gravity of offense**
- (b) How long since conviction,
completion of sentence**
- (c) Nature of job sought**

**Suggest employee do “individualized”
assessment**

Question and Answer Session



WYATT EARLY HARRIS WHEELER LLP, HIGH POINT, NC