Hospitality Update

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Peyton Manning Ate Here!

Managing Privacy Concerns In A Modern Workplace

By Larry Sorohan (New Orleans)

Privacy can be an elusive goal. In today's world, the Internet allows us an almost unlimited access to information. Yet, the more information that becomes available, the more the insatiable desire grows for still more detail on a moment's notice. Unless your name ends in "ardashian," however, you likely still crave some semblance of privacy. The crossroad between these competing two forces can create issues for employers in today's society.

What A Tip – Can't Wait To Show You

Recently, a waiter in North Carolina learned the difficult lesson that not all details of a restaurant's business (or a superstar's life) should be considered open to the world. Former Super Bowl MVP, and current quarterback for the Denver Broncos, Peyton Manning visited a restaurant called The Angus Barn in Raleigh, N.C. After eating, Manning left a $200.00 tip on a $739.58 check. He was so generous that the tip came on top of an added 18% gratuity. He did so using his credit card.

Apparently, the fact of receiving a tip from Manning was too much for the waiter to keep to himself. The waiter, identified as "Jon," took a photograph of the restaurant's copy of the credit card receipt and sent it out on twitter. As former Congressman Anthony Weiner can attest, such action does not come with any real means to control the distribution of information.

In the 1980's there was once a shampoo commercial that illustrated how information could quickly be passed to multiple people. The tag line went, "I told two friends, then they told two friends, and so on and so on…" In the social media/Facebook age, the phrase needs updating to "I told two thousand friends, then they told two thousand friends, and so on and so on…" Jon's message played out this way.

Eventually, the picture of the Manning receipt wound up on numerous gossip and sports websites. Unfortunately for Jon, word came back to his employer as well. Understandably, The Angus Barn did not share Jon's belief that Manning's private information was fit for public fare. Jon was fired. A company manager was quoted as saying, "The Angus Barn has a long tradition of serving celebrities major and minor, and it's a strict policy of the restaurant that their private dining experiences stay private."

The Manning episode illustrates a problem for restaurants and any other employers that accept private information from customers. It only takes a cell phone and twitter account for such information to become a national story. Initially, the events raise the obvious concern of dissemination of credit card information at a time of rampant fraud. In addition, employers must be concerned about other state laws designed to protect privacy.

When Is The Line Crossed?

In many states, (Louisiana is one), the law recognizes various claims for invasion of privacy. These may include: intrusion upon solitude or seclusion, and public disclosure of private facts. These causes of action are aimed at protecting against unreasonable publicity of one's private life. In addition, the laws often recognize claims for actions such as false-light privacy. Such laws prohibit dissemination of information that puts another in a "false light." Finally, most states also recognize a claim for appropriation of another's name or likeness without consent.

As can be seen from the titles, these claims differ from the more widely-known claims of defamation of character or slander. In most of these cases, liability does not depend upon proof that the information is false. In other words, even dissemination of truthful information can potentially lead to legal liability.

The good news for employers is that the standards for proving such claims are strict. But this good news does not mean that an employer should act without regard to the claims. Any employer who believes the Manning event is unique need only go online to be dissuaded. Case in point, there are food-themed websites that specifically post strange things put on receipts.

Too Much Of A Good Thing

Complete containment of customer information may be next to impossible in today's society. But that doesn't prevent you from taking steps, such as enacting policies, designed to maintain privacy. The question thus becomes whether enactment of policies is a good thing. Anyone who has ever spoken to a lawyer should know the answer – it depends.

Clearly, an employer cannot have a policy that covers every situation. Employees will inevitably find ways of introducing novel behaviors into the workplace. Further, the law does not prohibit an at-will employer from imposing discipline even in the absence of a policy expressly prohibiting the conduct at issue. Nonetheless, some policies are not merely a good thing; they are a virtual necessity. By way of example, a good non-discrimination and no-harassment policy should be enacted by all employers.

Continued on page 3

The Summer Jobs+ Initiative vs. Child Labor Laws

By Michelle I. Anderson (New Orleans)

"America's young people face record unemployment, and we need to do everything we can to make sure they've got the opportunity to earn the skills and a work ethic that come with a job. It's important for their future, and for America's…. This is an all-hands-on-deck moment. That's why today, we're launching Summer Jobs+, a joint initiative that challenges business leaders and communities to join my Administration in providing hundreds of thousands of summer jobs for America's youth" — President Barack Obama

With unemployment at an all time high, the U.S. Labor Department (DOL) will be launching new tools to implement President Obama's Summer Jobs+ initiative in the coming months. While two of the three components are designed to build life and work skills, the third component is aimed at providing on-the-job training and summer jobs. The program is targeted to serve low-income and "disconnected" youth (those not in school or working). Employers interested in furthering the initiative can obtain more information and implementation tools at http://www.dol.gov/summerjobs/pdf/Toolkit.pdf.

Although the Summer Jobs+ program targets one segment of the minor workforce, the goal is for these kids to take their tools and experiences into the job market. Over the years hospitality employers, such as restaurants, have been particularly good about hiring younger workers.

With this renewed focus on employing youth, employers in general should refresh themselves with the labor laws surrounding the employment of minors, regardless of whether your business is associated with the Summer Jobs+ initiative. An employer unfamiliar with the child labor laws may unwittingly find their summer spoiled.

While the DOL is the sole federal agency charged with enforcement of child labor laws, most states have enacted similar legislation and enforcement mechanisms. In some instances, the state law is much more restrictive than the federal regulations. This may present particular challenges for employers that operate in multiple states, as a one-size-fits-all approach to child labor won't work.

Limits Apply Even On Non-School Nights

Federal law currently prohibits 14- and 15-year olds from working during school hours. Additionally, they may only work up to three hours a day and 18 hours per week when school is *in session*, or up to eight hours a day and 40 hours per week when school is not *in session*. This is not the same thing as working on a *school night.*

This age group is also limited to working between 7 a.m. and 7 p.m.; except from June 1 through Labor Day, when evening hours are extended to 9 p.m. Employers sometimes mistakenly allow minors to work for more than three hours on a non-school nights, particularly Friday or Saturday nights.

Those 16 and older are not subject to work-hour restrictions under federal law. But 22 states do limit the number of hours and times of day those ages 16 and 17 may work. At least two states (Connecticut and Vermont) place limitations on work hours based upon certain industries.

Permitted And Prohibited Jobs For Minors

The child labor rules also determine what types of jobs a youth may or may not perform. A 14- or 15-year-old may not work in jobs identified by the Secretary of Labor as "hazardous." The regulations further provide a list of jobs that are expressly restricted, which includes the following:

- manufacturing, processing, and mining occupations;
- communications or public utilities jobs;
- construction or repair jobs;
- operating or assisting in operating power-driven machinery or hoisting apparatus other than typical office machines;
- work as a ride attendant or ride operator at an amusement park or a "dispatcher" at the top of elevated water slides;
- driving motor vehicles or helping a driver;
- youth peddling, sign waving, or door-to-door sales;
- poultry catching or cooping;
- lifeguarding at a natural environment such as a lake, river, ocean beach, quarry, pond;
- public messenger jobs;
- transporting persons or property;
- workrooms where products are manufactured, mined or processed;
- warehousing and storage;
- boiler or engine room work;
- cooking, except with gas or electric grills that do not involve cooking over an open flame, and with deep fat fryers that are equipped with and utilize devices that automatically lower and raise the baskets in and out of the hot grease or oil;
- baking;
- operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers, grinders, choppers or cutters and bakery mixers;
- freezers or meat coolers work, except minors may occasionally enter a freezer for a short period of time to retrieve items;
- loading or unloading goods on or off trucks, railcars or conveyors except in very limited circumstances;
- meat processing and work in areas where meat is processed;
- maintenance or repair of a building or its equipment;
- outside window washing that involves working from window sills;
- all work involving the use of ladders, scaffolds, or similar equipment; and
- warehouse work, except office and clerical work.

Jobs that 14- and 15 year-old workers may legally perform are limited to:

- office and clerical work;
- work of an intellectual or artistically creative nature;
- bagging and carrying out customers' orders;

Continued on page 3

The Summer Jobs+ Initiative vs. Child Labor Law

Continued from page 2

- cashiering, selling, modeling, art work, advertising, window trimming, or comparative shopping;
- pricing and tagging goods, assembling orders, packing, or shelving;
- clean-up work and grounds maintenance—(minors may use vacuums and floor waxers, but not power-driven mowers, cutters, and trimmers);
- work as a lifeguard at a traditional swimming pool or water amusement park if at least 15 years of age and properly certified;
- kitchen and other work in preparing and serving food and drinks, but only limited cooking duties and no baking;
- cleaning fruits and vegetables;
- cooking with gas or electric grills that do not involve cooking over an open flame and with deep fat fryers that are equipped with and utilize devices that automatically lower and raise the baskets in and out of the hot grease or oil;
- cleaning cooking equipment, including the filtering, transporting and dispensing of oil and grease, but only when the surfaces of the equipment and liquids do not exceed 100° F;
- pumping gas, cleaning and hand washing and polishing of cars and trucks (but the young worker may not repair cars, use garage lifting racks, or work in pits);
- wrapping, weighing, pricing, stocking any goods as long as he or she doesn't work where meat is being prepared and doesn't work in freezers or meat coolers;
- delivery work by foot, bicycle, or public transportation;
- riding in the passenger compartment of a motor vehicle (with exceptions); and
- loading and unloading onto and from motor vehicles, the hand tools and personal equipment the youth will use on the job site.

The Secretary of Labor has also deemed certain occupations to be hazardous for those ages 16-17. The rules prohibiting working in hazardous occupations apply either on an industry basis, or on an occupational basis regardless of the industry. Even parents employing their own children are subject to these rules. The following is prohibited:

- manufacturing and storing of explosives;
- driving a motor vehicle and being an outside helper on a motor vehicle;
- coal mining;
- forest fire fighting and fire prevention, timber tract management, forestry services, logging, and saw mill occupations;
- using power-driven woodworking machines;
- exposure to radioactive substances;
- operating power-driven hoisting apparatus;
- using power-driven metal-forming, punching, and shearing machines;
- mining, other than coal mining;
- meat and poultry packing or processing;
- operating power-driven bakery machines,
- using balers, compactors, and paper-products machines;
- manufacturing brick, tile, and related products;
- using power-driven circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs;
- any work involving wrecking, demolition, and shipbreaking operations;
- roofing operations and all work on or about a roof; and
- excavation operations.

Many states have further restricted the types of jobs or industries for young workers.

Employers must follow the more restrictive statute.

Keeping Pace With Change

Federal and state child labor laws are complex and continue to evolve. Whether a job is permitted or prohibited often requires a case-by-case analysis. To keep minor employees safe and your company in full compliance with the law, you must become familiar with the relevant regulations.

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Peyton Manning Ate Here!

Continued from page 1

For businesses that routinely obtain private customer information, an effective privacy policy is a good idea. Many employers in the retail business now prohibit employees from using cell phones or similar electronic devices while working. They also routinely enact policies that expressly prohibit the dissemination of customer information.

An effective policy should warn that violation could lead to discipline up to and including discharge. It should also be designed to teach an employee as well. That is, it should clearly spell out what type of conduct is prohibited. While it would appear that most functioning adults should know better than to photograph and disseminate credit card information, other situations may be spelled out in the policy, particularly those that may be somewhat unique to the employer.

Even the best policy is worthless, however, unless evenly enforced. And the enforcement should always be documented. Sporadic enforcement or failure to document all infractions can cause an employer headaches as well. Employees routinely attempt to claim uneven enforcement in discrimination actions or simply when complaining about their job.

Unlike his character portrayed in a Saturday Night Live skit, Peyton Manning turned out to be a pretty good guy. Had Jon had the sense to accept his generosity without publishing the credit card receipt, he may still have his job to go along with extra cash. If an employer acts to prevent such action, it can do both itself and its employees a good service. Not to mention celebrity guests.

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Oh Brother, Make It Stop!

By C.R. Wright (Atlanta)

By now you have probably already heard that another celebrity is in the news as a result of harassment allegations. In Savannah, Georgia, Paula Deen, her brother "Bubba," and their restaurant Uncle Bubba's Oyster House have been sued for racism and sexual harassment. According to a complaint filed in Chatham County by former employee Lisa Jackson, "Bubba" Hiers engaged in violent behavior including sexual harassment directed at female employees.

Say What?

Ms. Jackson had been promoted to general manager at the restaurant by Paula Deen after a previous general manager, who was male, was fired for having inappropriate relationships with subordinate employees, according to the complaint. At the time, Ms. Deen allegedly made a pointed comment about the fact that she did not intend to lose all she had worked for just because of the former general manager's illicit pursuits.

Ms. Deen also made comments about the reasons why she thought a female should be placed in the position as general manager, the suit claims. The complaint further alleges that managers and others used anti-Semitic, sexist, and racist language, and that females were paid less than males for similar work.

Let's Not Make A Federal Case Out Of This

Ms. Jackson's attorney reportedly made many attempts to secure a settlement, asking for as much as $12 million from Ms. Deen. When his attempts to secure an acceptable settlement failed, he filed the lawsuit in Georgia Superior Court in Chatham County.

Rather than bringing claims under federal anti-discrimination laws, the complaint includes counts apparently brought under Georgia law for sexual harassment, emotional distress, assault, battery and other claims, along with a request for attorneys' fees under a Georgia law that allows for fees when it is shown that the defendant has acted in bad faith or has caused the plaintiff unnecessary trouble or expense.

The specific allegations, which have been labeled as being "explosive," are detailed and vulgar. Events and comments allegedly occurring during the past five or more years are included to portray a pattern of bad behavior over an extended period of time by the restaurant owners and management. Ms. Jackson alleges that there was no human resources department to address her concerns, and that management did not appropriately respond to her many complaints about inappropriate behavior.

A Response, And An Answer

According to her attorneys, Paula Deen says the claims are false, and that they were filed after she refused to pay Ms. Jackson to "address false claims" and "keep her quiet." Calling the allegations baseless and inflammatory, and arguing that Jackson and her attorney just want to attack Deen because she would not pay the $1.25 million they demanded, Deen's attorneys sought a gag order to restrict pre-trial comments about the allegations and attempt to minimize the adverse publicity. The Judge denied the request for a gag order. However, days later, following a closed-door meeting with the Judge, Ms. Jackson's attorney said he would no longer provide information about the case to the media.

Deen's lawyers filed an answer to the complaint in court only one day after the complaint was filed. The answer denied the allegations and asserted that because Ms. Jackson did not file a Charge with the EEOC regarding the alleged sexual harassment those claims should be dismissed. The answer also asked that all events allegedly occurring two or more years before the filing of the complaint be stricken.

So What's The Point?

This case illustrates once again how things can get ugly very fast when an unhappy former employee raises allegations and files a lawsuit. Lawsuits often contain spurious and scandalous details, essentially whatever the plaintiff and her attorney choose to allege and claim to be true. Because lawsuits filed are immediately available to the public, those details spread like wildfire through the media, especially when a prominent celebrity or company name is the target of the lawsuit.

We do not know, and may never know, the truth about all of the details regarding Ms. Jackson's allegations in this case. Clearly Ms. Deen vehemently denies Ms. Jackson's allegations. No doubt the others involved have varying recollections and accounts of the events and circumstances involved.

But this case does serve as a reminder that all such allegations made by a current or former employee should be taken seriously. All organizations should have policies and practices in place to timely investigate and document the facts and circumstances when allegations of harassment or inappropriate conduct are raised. Then, if claims are made years later, there is specific documentation and detail to deter an individual who may wish to falsely portray things to gain leverage over the organization and management.

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