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Navigating the Information Superhighway: Understanding the Impact of Social Media In the Workplace

Presented by

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Potential Legal Exposure Due to Employee Use of Social Media

- Discriminatory/Derogatory Postings;
- Threats of Violence;
- Disclosure of the Company's Confidential Information/Trade Secrets;
- Defamation;
- Illegal Content;
- Participation in Lawful Conduct;
- Invasion of Privacy; and
- Copyright Infringement.

How To Minimize Risk To Your Company

- Implement an electronic use policy:
 - Employees should be told they have no expectation of privacy regarding use of the Internet and social networking sites.
 - Incorporate and reference other employment policies.
 - If consistent with company policy, prohibit use of social networking sites while at work or block sites in the workplace, unless required by an employee's job duties.

Can An Employer Monitor Social Media Content of Its Employees

- Invasion of Privacy Concerns
- *City of Ontario v. Quon*:
 - Can an employer read text messages sent on a workplace mobile device?
 - Lower court: Generally, individuals have a reasonable expectation of privacy in stored text messages.
 - Exceptions:
 - Consent of the writer or recipient
 - Computer use policy

Invasion of Privacy Concerns (cont'd)

- *Yaith v. Fairview Cedar Ridge Clinic*
 - MySpace posting was per se “publicity”
 - Communication via social networking sites is considered communication to the public
 - Number of actual viewers irrelevant

Potential Liability for Employee's Use of Mobile Devices

- Texting While Driving/Operating a Motor Vehicle
 - Unlawful in Several States and Municipalities
 - Ask:
 - Is the employee acting in the scope of employment?

Potential Liability for Employee's Use of Mobile Devices

- Overtime
 - Use of mobile devices may be considered time worked by non-exempt employees
 - “De minimis” time
 - Time spent on-call
 - Exempt Employees

How To Minimize Risk To Your Company

- Carefully consider which employees should be issued company-owned mobile devices.
- Consider drafting and implementing policies to address the use of mobile devices.
 - Employer monitoring of text messages
 - Operating a motor vehicle
 - Use after regular work hours

***Can the Company be
sued for information
posted on social
networking sites?***

Employee Complaints

- Look for:
 - Complaints of discrimination or harassment;
 - Complaints of unpaid overtime or other wage and hour violations;
 - Any concerted activities that may be protected under the National Labor Relations Act; or
 - Complaints of unlawful activities that may be protected by whistleblower laws.
 - Be mindful of federal and state laws that prohibit retaliatory action.

How To Minimize Risk To Your Company

- Make sure Company policies clearly state correct procedures to file complaint.
- Advise that personal Internet postings unrelated to the employee's job duties should clearly state that the opinions expressed in the posting are the individual's personal opinion and not the Company's opinion.

Use of Social Media in the Hiring Process – Be Careful What You Ask For

- Anti-Discrimination
 - Pictures that reveal protected classification; and
 - Searches that uncover membership in organizations based on protected classification.
- Fair Credit Reporting Act
 - Applies to background checks conducted by a third party (not the employer).
- Participation in Lawful Conduct
 - Check state laws.

How To Minimize Risk To Your Company

- If you use social media to review an applicant's background, do so for all applicants.
- Hiring policies must be applied consistently with regard to all applicants.
- Verify information obtained through Internet searches.
- Document the reasons for any employment decision.

***Can the Company be sued
for an employee's use of
someone else's work?***

Copyright Laws

- Yes, if the employee uses a copyrighted work without authorization.
- Under some circumstances, use of quotes or samples may be permissible.
- Downloading copyrighted material from the Internet is considered infringement.

How To Minimize Risk To Your Company

- Consider whether use constitutes “fair use.”
- Implement a policy which requires employees to obtain permission prior to including/downloading copyrighted material on a Company sponsored posting.



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