

Why Businesses Need a Policy Governing Employee Use of Social Media

By Jeffrey Gross¹

Employee use of social media presents great opportunities as well as serious business and legal risks. This is not just an issue and opportunity for large global companies. All companies rely on relationships that can be enhanced by the expertise of their employees as they interact through social media. By the same token, all companies have intellectual property and reputations that can be jeopardized by careless employees.

There are a multitude of legal issues that come into play when employees use social media. These include privacy rights and obligations, insider trading, copyright or trademark infringement, and FTC rules on blogging – just to name a few. Furthermore, employee use of social media may become the subject of legal disputes between the employer and an employee. For example, even non-unionized employees are protected by the National Labor Relations Act if their social media use constitutes “concerted activity.” Thus, simply banning all disparaging comments or prohibiting the discussion of work-related matters on social media could subject the company to legal liability. Likewise, the existence or non-existence of a written company policy may be critical to any dispute about the ownership of social media accounts or the use of their content. Furthermore, employee use of social media accounts may be evidence which could be relevant to litigation involving the company, and which may need to be preserved.

A well-drafted social media policy can protect the company and help employees know their rights, while a poorly-drafted one may put an employer on the wrong side of the NLRA or create other legal or business-related obstacles.

Here are some of the questions and issues which should be considered when devising a social media policy that fits a company’s needs:

- Does the company have an overall policy manual? If so, how would a social media policy interact with other policies?
- Have company employees previously had an expectation of privacy with respect to computer or social media use? Have employees been warned that they should not

¹ Jeffrey Gross is a partner at Vandenberg & Feliu, LLP, where he represents clients in commercial and employment-related litigation. He is currently litigating a cutting-edge dispute about the ownership of a social media account. He has also helped clients develop appropriate policies and procedures and has advised them on regulatory matters.

expect any privacy? Are there restrictions in place on employee use of computers or social media for purely personal reasons while at work?

- Is the company's industry governed by a specific set of regulations and compliance obligations?
- Does the company require some or all of its employees to enter into agreements barring them from competing or soliciting business if they leave the company?

The potential cost of not having a policy or having an impermissible one (such as one that violates the National Labor Relations Act) far exceeds the cost of having a policy. In any event, by empowering employees to use social media in an appropriate way, while adhering to the company's values and practices, business owners can drive substantial benefits to their bottom line.