

## **CLIENT ALERT**

### **WHEN EMPLOYEES DISPARAGE THEIR EMPLOYER ON SOCIAL NETWORKS: PRACTICAL TIPS**

The recent controversy over the firing of an employee for criticizing her supervisor on Facebook is overblown. It relates to the limited issue of whether a discussion between fellow union members on the internet constitutes “protected concerted activity”. Outside the arena of unionized shops, the employee still has the right of freedom of speech under the First Amendment; and the employer still has the privilege under the employment-at-will doctrine to fire the employee for any lawful reason or for no reason at all. An employer is not required to sit idly by while its reputation is smeared on the internet by a disgruntled employee.

Employer criticism is not the only issue of concern. A construction company was sued for negligently retaining a driver whose MySpace profile disclosed that he was an alcoholic. Historically, employers were not legally required to know troubling information about employees if the information, while technically public, was not reasonably accessible. But the proliferation of information in Facebook, MySpace and Twitter is just a few keystrokes away.

Social network screening of job seekers may provide prospective employers with information on job qualifications, communication skills, creativity, inappropriate photos or comments, and substance abuse. Such websites might even reinforce a decision to hire someone. *CareerBuilder survey (2009), cited in [www.ohiobar.org](http://www.ohiobar.org).*

#### Tips for employers:

- ✓ Internet screening of job applicants should be standard operating procedure, but limited to legitimate, work-related information.
- ✓ Implement a written social networking policy that protects confidential information and prohibits defamation of the company, its products, clients and employees.
- ✓ Give special attention to high-liability employees who work with dangerous equipment, children or sensitive data. *Human Resource Executive (10/2/2009).*

#### Tips for employees:

- ✓ Redouble your efforts to resolve work-related conflicts face-to-face with your employer.
- ✓ Recognize that an internet reputation as a difficult employee might be detrimental to you.
- ✓ Consider spending less time on Facebook and more time on job search websites.

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