

## **Social Media in the Workplace**

Ignoring the legal aspect of social media in the workplace can result in unwanted and expensive litigation. Social Media can be good, but may end up being bad and perhaps downright ugly where protective measures are not in place. This article will briefly examine the legal impact of social media in the areas of employee privacy rights and employment discrimination.

### *Social Media & Employee Privacy Rights*

Subject to federal and state statutes, courts often balance the employee's expectation of privacy against the employer's concern about issues such as employee breach of trade secret and confidentiality, copyright infringement and defamation. The Electronic Communications Privacy Act of 1986 regulates wiretaps and the interception of electronic communications, stored communications and the access thereof. The ECPA has several exceptions to the application of the prohibition of interception of electronic communications. The three exceptions commonly applied to the workplace are (1) where one party consents, (2) where the provider of the communication service can monitor communications, and (3) where the monitoring is done in the ordinary course of business. Consequently, employers should require employees acknowledge and sign company computer use limitation policies as well as require employee consent, in writing, to the monitoring and accessing of computer information, stored or otherwise, as a way to address social media abuse.

Your social media policy may include prohibitions against:

- violent, obscene, profane, hateful, or racist comments
- comments that threaten, harass or defame any person or organization
- comments that suggest or encourage illegal activity
- copyright infringement

### *Social Media & Employment Discrimination*

Title VII of the Civil Rights Act of 1964 and its amendments, prohibits discrimination in employment on the basis of race, color, religion, sex or national origin. Not to mention, the Age Discrimination in Employment Act of 1967 makes it illegal to discriminate against people forty years of age or older in any employment practice. Discrimination is prohibited in all phases of employment: promotion, training opportunities, termination, compensation and benefits. It is common for employers to perform a Google search or utilize some search engine to find out information about an applicant in the hiring process and about an employee. With millions of potential job applicants and employees uploading photos of themselves on their Facebook or LinkedIn accounts, an employer could discriminate against certain applicants based solely on race, sex, color or origin by looking or guessing at the posted profile photo. Additionally, job applicants

and employees disclose personal information about themselves on social networking sites. Again, an employer could discriminate against an applicant based on age where the age is listed on the profile or 'guessing' from posted school graduation dates. Some job applicants and employees express their beliefs, opinions, and affiliations via their personal blogs and post comments to journal articles or editorials *outside of work on their own personal time*. An employer could discriminate against a job applicant based on religion after reading these posted comments, without validating any of the assumptions. Moreover, an employer could watch a You Tube video or video blog of an applicant to specifically whether the applicant speaks with an accent, invoking a person's country of origin or nationality. A majority of states have enacted fair employment statutes that may be more stringent than federal laws, thus an employer must be knowledgeable of said statutes.

*Conclusion:*

The following are Best Practices to consider:

- Update your current company policies.
- Effectively communicate these policies to your employees.
- Implement a complaint procedure.
- Have employees acknowledge you have communicated the new policy through obtaining a signature and date.
- Enforce consistently the policies.

Employers should regularly train employees about company policies and procedures in a clear, concise and comprehensive manner. It is recommended employers consult with their human resources team and/or employment law attorney when drafting and implementing such policies. Whether you like it or not, social media continues evolve like that of technology.

Disclaimer

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