Divisive Devices: Navigating Workplace Pitfalls Caused By Connectivity And Mobile Apps

Insights

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> *"A simple PC contains a kind of 'undead' spectral domain of deleted texts which nevertheless continue to lead a shadowy existence, 'between the two deaths,' officially deleted but still there, waiting to be recovered. This is the ultimate horror of the digital universe: in it everything remains forever inscribed; it is practically impossible to get rid of...."*

It is unlikely that the Slovenian psychoanalytic Marxist philosopher Slavoj Zizek had in mind the wellbeing of corporate defendants in workplace litigation when he articulated this "ultimate horror of the digital age." Nevertheless, you would be well advised to take heed to his cautionary words about the permanence of electronic communications.

Water-Cooler Talk That Never Goes Away

With the proliferation of computer and mobile applications designed to streamline workplace communication and connect employees to one another in virtual settings, the problem has only become more pronounced. Apps like Slack, Campfire, and Google Hangouts facilitate immediate sharing of information and collaboration without the waste of having to get up from one's desk and find a real-life water cooler to gather around.

These apps also create a permanent searchable record of all the stupid, inappropriate, and harmful things that employees say on those platforms. For plaintiffs' attorneys these records can be a treasure trove.

Take, for example, the recent case of *Bollea v. Gawker Media,* also known as the infamous Hulk Hogan sex-tape trial. Writers and employees at Gawker used the app Campfire to set up chatrooms, share files, and collaborate on stories, which were all legitimate business-related purposes. However, employees also used the app to gossip and editorialize about, among other things, the Hogan story.

Employee Max Read recently revealed in *New York Magazine* that the experience of having a private off-hand joke he made on the app to coworkers – something about the wrestling maneuver known as a leg drop – was embarrassing to have dissected in a sworn deposition and ultimately appear in the trial itself. For Read and for others, it can be truly haunting to have long-dead texts return years later as resurrected zombies in workplace litigation.

What Should You Do?
The lesson here is to be mindful of employee tendencies to treat these new communication platforms as operating like speech. While on the one hand there are clear advantages to be gained from the spontaneity and informality of the chatroom – efficiency, camaraderie, and easy collaboration, to name a few – verbal remarks that might make sense (or at least be forgotten) in the context of oral communication can later be dug up and used for very different effect. You need to set and enforce standards of chatroom communication consistent with other areas of their workplace culture.

But Wait – There's More...
These shifting tectonics of the workplace in the digital age are not unique to the chatroom apps of Slack and Campfire. Employees also use apps like Get the Memo to anonymously carp about their company and superiors. This app, which bills itself as "a safe place to talk about work," allows people to post and view anonymous messages left by unnamed coworkers. Employees could use this app to spout off about any number of topics, true or untrue, verified information or merely gossip, sowing discord in the workplace.

Another smartphone app to worry about is currently being created by labor advocates. The proposed app would not only allow employees to communicate anonymously about working conditions, but would assist in identifying an appropriate bargaining unit and even gather electronic signatures for a union petition (read more here). Most troublesome for you is that these activities could be happening right under your nose without you being at all aware that an employee-organizing campaign is even occurring.

And there are other developers working to create products that facilitate potentially divisive employee behavior. For example, the Workers Lab is developing an app that would allow employees to document and report OSHA violations with a few simple clicks on a smart phone. The app is being made by the same outfit that developed SeeClickFix, which allows users to report problems like potholes or graffiti to municipal authorities.

What Should You Do?
In the private workplace, even for companies that are fully compliant with safety and other regulatory standards, these tools will provide new opportunities for disgruntled employees to create havoc while ushering in a new level of government scrutiny. Meanwhile, labor laws and whistleblower statutes may make it impossible for you to craft policies that would prohibit these apps from being deployed by your workforce.

To combat these digital terrors, the first step is to understand the role that you as the employer can play in setting the tone. As in the case of Slack and Campfire, the employer sets the baseline for the workplace culture that develops and uses these apps for communication. Through clear policies and focused training efforts, you can reduce the likelihood that employees will misuse these apps and create "evidence" that will come back and haunt you.

You should also create and maintain open door policies and other efforts to combat employee alienation. Employees who feel that they are a part of your enterprise and who feel that you want to hear their concerns are more likely to raise their concerns internally than to report those issues to a third-party regulator, seek union representation, or post their grievances on a public but anonymous app.

Finally, you should work with your frontline supervisors. If they are trained on what to look for, they can provide critical early detection of the kinds of employee disaffection that leads to the utilization of these apps and other divisive devices.

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