



Employment Law Risk? Here Are Four Types of Apps for That

News

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Scott Fanning was quoted in *Corporate Counsel* on August 4, 2015. The article “Employment Law Risk? Here Are Four Types of Apps for That” discussed how apps have found their way into the workplace, where in the best case they can help get more work done, but in some scenarios can lead to liability for employers.

Scott was quoted on four kinds of apps that companies should be on the lookout for:

1. Gossip Apps

“These are the new watercoolers,” Scott told CorpCounsel.com.

Scott said that while employers can issue rules preventing employees from chatting through apps during work time for productivity reasons, employers have a lot less control over what happens when employees are on break or on their own time and choose to gossip. The NLRB, he explained, has said companies can’t ban gossip, even anonymous gossip, as this can easily be construed as a prohibition of employees’ rights to protected concerted activity under the National Labor Relations Act.

“What a lot of companies do is try to pre-empt and prevent a need for it by creating their own anonymous complaint hotline,” said Scott. If employees have a direct route to voice issues with the company, they hopefully won’t need to take to apps in order to feel heard.

2. Dating Apps

“These apps definitely implicate dating policies, harassment policies and policies on social media and cellphones in the workplace,” said Scott.

However, he noted, the NLRB has been accepting of employer bans on employees’ use of social media if it is being used for discriminatory or harassing purposes, so it may be smart to incorporate these apps into anti-harassment policies.

If you’re going to allow those relationships, transparency is very important throughout the process,” said Scott, explaining that it’s advisable to have workers in a relationship sign a “love contract” that prevents either party from claiming in the future that the relationship was

nonconsensual.

3. **Sharing Economy Apps**

Airbnb might sound like a cheaper option for work-related travel, but Scott pointed out that it's often not worth the risk for companies, since this portion of the emerging sharing economy still is hardly regulated at all. There could be health and safety hazards in the temporary accommodation, leading to potential complaints to the Occupational Safety and Health Administration. Shared Airbnb housing also means that the traveling employee might be in the same living space as a stranger who does not have their best interests in mind.

He advised that companies avoid using the tools provided by these apps unless they are in an area where the services provided are properly regulated and licensed. It's certainly worth making sure that corporate travel policies weigh in on what types of travel methods are allowed, and that companies refrain from paying employees back for travel that doesn't fit the bill. "It's good to address it, because even though you don't encourage and don't necessarily want them to use these services, by reimbursing it you still may be condoning it," said Scott.

4. **Data Storage Apps**

Scott explained that companies need to have clear policies about keeping data within the company, particularly if the organization has a Bring Your Own Device policy for employees. Companies also will want to talk to employees who are on their way out of the company. "Review your exit procedures, meet with employees to see where their data is and if they used any of those services," he said.

He added that use of storage apps could be a telltale sign of wage-and-hour risk as well. Under the Fair Labor Standards Act, a nonexempt employee should not be working outside of normal hours without compensation. But if there is evidence they are transferring data to a storage app, they may in fact be doing extra unpaid work outside of the office. "If you're not tracking those hours, you could have a minimum-wage problem or overtime violation problem," Scott said.

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