



Drafting An Effective Social-Media Policy

Insights

10.01.09

(Labor Letter, October 2009)

From Facebook to LinkedIn to Twitter, it seems that internet-based communications are everywhere. Some argue that Web 2.0 technologies, such as blogging, micro-blogging, photo-sharing, video-sharing, life-casting and networking, help companies meet their customers' needs and that social media supports the democratization of knowledge, news and even professional sports. But there are risks associated with employee social media use; risks that you can manage with a clearly defined policy regarding media use.

The Evolving Legal Landscape

According to a 2009 survey conducted by Deloitte LLP, 55% of employees visit social networking sites at least once a week and 20% admit to visiting social networking sites during work hours. The survey also states that 33% of employees do not consider the business implications of internet postings. The fact that any employee can post anything on the internet at any time, and reach a world-wide audience, has generated lawsuits against employers.

For example, one court allowed a civil-rights class-action lawsuit against a major metropolitan police force because the employer was allegedly aware that some employees maintained a racially offensive website. Another court recognized a negligence cause of action against an employer for failure to prevent an employee's improper use of its computer systems to post child pornography on the internet.

Other employers have been found liable for using information posted on social media sites as the basis for adverse employment actions. For example, a national restaurant chain terminated an employee for posting derogatory statements on a password protected MySpace account, then was found liable for improperly accessing the postings under the Stored Communications Act of 1986. In another example, a major airline is defending itself in court after terminating a flight attendant who posted pictures of herself in an airline uniform on a "queen of sky" blog.

The law allows you to regulate, and even prohibit, your employees from engaging in online social networking activities while on company time, property or business. It is also appropriate to limit employees from posting disparaging comments, or discussing the company's business, while engaging in social networking by adopting a policy making it clear that such conduct is prohibited.

What's In Your Policy?

The exact wording of a social-media policy will depend somewhat on the nature of your business and your workforce, but there are certain fundamentals that should always be addressed.

Make social-media activities subject to all existing company policies.

Social-networking activities should be subject to existing policies that govern the use of the company's communication and computer systems, as well as those that protect the confidentiality of company information, and those which prohibit unlawful discrimination or harassment.

Employees should make it clear they are speaking for themselves.

Employees should not use the name, trademarks, logos or copyright-protected material of the company or its clients. And they should make it clear in any online activity that their views and opinions about work-related matters are their own, have not been reviewed by their employer, and do not necessarily represent the views and opinions of the employer.

You should also prohibit employees from listing their Company e-mail address unless the social networking site is used purely for Company business or professional purposes.

Here are some additional thoughts:

- Do not allow employees to disclose information regarding the company's clients, business partners, or the details of a particular engagement or project.
- Employees must remain respectful of the company's products or services. When employees complain about pay, benefits or policies it may very well be protected activity, but denigrating the quality of your service or products should be a disciplinary matter.
- Anything obscene, vulgar, defamatory, threatening, discriminatory, harassing, abusive, hateful, or embarrassing to a fellow employee, should be forbidden. That should be part of the policy even if the company's name is not used.
- Make it clear to employees that they should expect compliance monitoring, meaning that any information they create, transmit, download, exchange or discuss on any social media may be accessed by the company at any time without prior notice.

See You Online – Or Maybe In Court

Until the laws in this area evolve, employers can reasonably expect to face lawsuits either because of their employees' online activities, or for taking adverse employment actions based on what employees say and do online. In the meantime, the legal risks presented by employee social-media use can be managed by developing and emphasizing to employees a policy governing online statements that might affect the company. Such a policy should be based on the common sense principles that sometimes are forgotten or ignored in the virtual world.

