# Peyton Manning Ate Here! Managing Privacy Concerns In A Modern Workplace

Insights
6.01.12

(Hospitality Update, No. 2, June 2012)

Privacy can be an elusive goal. In today's world, the Internet allows us an almost unlimited access to information. Yet, the more information that becomes available, the more the insatiable desire grows for still more detail on a moment's notice. Unless your name ends in "ardashian," however, you likely still crave some semblance of privacy. The crossroad between these competing two forces can create issues for employers in today's society.

**What A Tip – Can't Wait To Show You**
Recently, a waiter in North Carolina learned the difficult lesson that not all details of a restaurant's business (or a superstar's life) should be considered open to the world. Former Super Bowl MVP, and current quarterback for the Denver Broncos, Peyton Manning visited a restaurant called The Angus Barn in Raleigh, N.C. After eating, Manning left a $200.00 tip on a $739.58 check. He was so generous that the tip came on top of an added 18% gratuity. He did so using his credit card.

Apparently, the fact of receiving a tip from Manning was too much for the waiter to keep to himself. The waiter, identified as "Jon," took a photograph of the restaurant's copy of the credit card receipt and sent it out on twitter. As former Congressman Anthony Weiner can attest, such action does not come with any real means to control the distribution of information.

In the 1980's there was once a shampoo commercial that illustrated how information could quickly be passed to multiple people. The tag line went, "I told two friends, then they told two friends, and so on and so on..." In the social media/Facebook age, the phrase needs updating to "I told two thousand friends, then they told two thousand friends, and so on and so on..." Jon's message played out this way.

Eventually, the picture of the Manning receipt wound up on numerous gossip and sports websites. Unfortunately for Jon, word came back to his employer as well. Understandably, The Angus Barn did not share Jon's belief that Manning's private information was fit for public fare. Jon was fired. A company manager was quoted as saying, "The Angus Barn has a long tradition of serving celebrities major and minor, and it's a strict policy of the restaurant that their private dining experiences stay private."

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

The Manning episode illustrates a problem for restaurants and any other employers that accept private information from customers. It only takes a cell phone and twitter account for such information to become a national story. Initially, the events raise the obvious concern of dissemination of credit card information at a time of rampant fraud. In addition, employers must be concerned about other state laws designed to protect privacy.

**When Is The Line Crossed?**

In many states, (Louisiana is one), the law recognizes various claims for invasion of privacy. These may include: intrusion upon solitude or seclusion, and public disclosure of private facts. These causes of action are aimed at protecting against unreasonable publicity of one's private life. In addition, the laws often recognize claims for actions such as false-light privacy. Such laws prohibit dissemination of information that puts another in a "false light." Finally, most states also recognize a claim for appropriation of another's name or likeness without consent.

As can be seen from the titles, these claims differ from the more widely-known claims of defamation of character or slander. In most of these cases, liability does not depend upon proof that the information is false. In other words, even dissemination of truthful information can potentially lead to legal liability.

The good news for employers is that the standards for proving such claims are strict. But this good news does not mean that an employer should act without regard to the claims. Any employer who believes the Manning event is unique need only go online to be dissuaded. Case in point, there are food-themed websites that specifically post strange things put on receipts.

**Too Much Of A Good Thing**

Complete containment of customer information may be next to impossible in today's society. But that doesn't prevent you from taking steps, such as enacting policies, designed to maintain privacy. The question thus becomes whether enactment of policies is a good thing. Anyone who has ever spoken to a lawyer should know the answer – it depends.

Clearly, an employer cannot have a policy that covers every situation. Employees will inevitably find ways of introducing novel behaviors into the workplace. Further, the law does not prohibit an at-will employer from imposing discipline even in the absence of a policy expressly prohibiting the conduct at issue. Nonetheless, some policies are not merely a good thing; they are a virtual necessity. By way of example, a good non-discrimination and no-harassment policy should be enacted by all employers.

For businesses that routinely obtain private customer information, an effective privacy policy is a good idea. Many employers in the retail business now prohibit employees from using cell phones or similar electronic devices while working. They also routinely enact policies that expressly prohibit the dissemination of customer information.

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

An effective policy should warn that violation could lead to discipline up to and including discharge. It should also be designed to teach an employee as well. That is, it should clearly spell out what type of conduct is prohibited. While it would appear that most functioning adults should know better than to photograph and disseminate credit card information, other situations may be spelled out in the policy, particularly those that may be somewhat unique to the employer.

Even the best policy is worthless, however, unless evenly enforced. And the enforcement should always be documented. Sporadic enforcement or failure to document all infractions can cause an employer headaches as well. Employees routinely attempt to claim uneven enforcement in discrimination actions or simply when complaining about their job.

Unlike his character portrayed in a Saturday Night Live skit, Peyton Manning turned out to be a pretty good guy. Had Jon had the sense to accept his generosity without publishing the credit card receipt, he may still have his job to go along with extra cash. If an employer acts to prevent such action, it can do both itself and its employees a good service. Not to mention celebrity guests.

---

*For more information contact the author at lsorohan@fisherphillips.com or (504) 522-3303.*

## *Related People*

**Lawrence J. Sorohan, II**
Of Counsel
504.522.3303
Email

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.