Don't Feed The Trolls: What Employers Can Do To Combat Internet Trolls

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Troll (noun) – a person who intentionally antagonizes others online by posting inflammatory, irrelevant, or offensive comments or other disruptive content. *Merriam-Webster.com.* Merriam-Webster, 2017.

The internet has forever changed the way information is shared. The rapid-fire online patter produces comments and information that could be both helpful and harmful to an employer and its employees. On the one hand, such information can help employers gain insight to the thinking, background, and behavior of its employees and applicants which were not previously accessible. But online behavior has a dark side – the free-flow of information often devolves into the venting of personal opinions and private information about the company or coworkers. At times this information shouldn't be shared because of legal or moral obligations; other times the information (such as gossip or insults) could be overly upsetting and impact workplace morale.

Thus is born the internet "troll," that sometimes-anonymous creature whose main goal in life seems to be slinging online mud. Through their internet activities, trolls harm employers by damaging the company image, weakening workplace morale, and invading privacy and confidentiality. What can an employer do about internet trolls and the damage they wreak?

Can You Fire That Troll?
Assuming you learn the identity of the troll and determine he or she is an employee, can you fire them? The answer, as is true with so many legal answers, is: it depends.

Many businesses monitor the online presence of their employees and applicants. Some routinely run applicants' names through search engines that "mine" data from Twitter, Facebook, and other social media sites. Others require employees to turn over their social media passwords if deemed necessary for a workplace investigation, perhaps because the business suspects an employee is "trolling" the company or coworkers through an online platform.

However, there has been some significant pushback to this practice. At least 25 states have enacted laws that prevent employers from interfering with employees' off-duty privacy rights. For example, New York prohibits companies from rejecting an applicant or firing an employee because of off-duty political activities or other lawful recreational activities.

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The National Labor Relations Board (NLRB) has also gotten involved. Recently, the Board was asked to rule on a company policy that, among other things, prevented employees from making disparaging comments about the company on social media. The NLRB issued a decision that such a policy violated the National Labor Relations Act because of the "chilling effect" it could have on employee rights. In order to rectify the situation, the NLRB ordered the company to rescind or modify the language that "prohibited employees from electronically posting critical comments about its organization on or off company time."

What Rules Must You Follow?

To a certain extent these legal standards impede your ability to fire an employee who is trashing your company on the internet. But at what point does common sense kick in and permit you to take action? While most statutes protect an employee's right to keep personal information private (such as passwords, personal data, etc.), many permit you to take disciplinary action if the information spread by the internet troll is defamatory or discloses confidential information about your company or employees.

Also, employers often require employees to provide them access to accounts or services that are provided by the employer, and which were obtained due only to their employment with your business. For instance, while the relatively new Wisconsin Social Media Protection Act (2014) places restrictions on various employer actions that interfere with employees' online activities, nothing in the Act prevents employers from requiring access to information on an electronic communications device (such as a computer or cell phone) supplied by or paid for by the employer.

Further, virtually all applicable laws permit you to discipline or discharge employees who transfer confidential or financial information through a personal social media account without your authorization. In many instances, you may even be permitted to require an employee to provide you access or observe a personal account if you can demonstrate "reasonable belief" that the employee transferred confidential information without your authorization.

What Should You Do With The Troll?

In conclusion, you have options for handling an internet troll, but you must be careful in your actions and policies. If the troll is harassing or defaming someone through online postings, you can probably take action. But if the troll is simply posting provocative statements (for example, opinions about religion or politics – or your business), you need to tread a bit more carefully. After consulting local law to determine the contours of employee rights, ensure that the reasoning for any action you take is clear, and that your actions are consistent. This plan should help you when confronted with the 21st-century troll.

For more information, contact – but don't troll – the author at ALambert@fisherphillips.com or 214.220.8324.

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