



When Can Employers Be Liable For Employees' Online Conduct?

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The federal government recently enacted new guidelines that could cause employers to face legal liability for the online conduct of their employees. Under new Federal Trade Commission guidelines employers could face enforcement actions should their employees use social media to comment on their company's products or services in inappropriate ways, even if the employer did not sanction or authorize the comments. Whether employees use personal blogs, Facebook, MySpace, Twitter, message boards, or any other type of online social networking platform, employers could face the wrath of the federal government or the prospect of class action lawsuits if online postings run afoul of the new guidance.

The FTC guidelines provide an example of a potential violation. Think of an online message board where people visit to read, share and comment upon new music download technology. One of the online posters on the message board makes several positive comments about a specific MP3 playback device, which might lead another person to purchase that product. Unbeknownst to anyone on that message board, that online poster happens to work for that playback device manufacturer. That is exactly the kind of material connection that the FTC now requires be revealed in order to stay on the right side of the new guidelines. If that product happens to be defective, and a purchasing consumer claims that the online comments from the employee were part of the reason she bought that particular unit, the company will be on the hook for a violation along with the online poster.

Obviously, employers need to update or create a social networking employment policy to address this new development. As with any employment policy, if it is not in writing, it does not exist. And if you cannot prove that it was distributed to all of your employees (preferably with a signed acknowledgement page, or an online signature for policies maintained on the company's intranet), it is practically worthless. As for this specific policy, it is recommended that you either prohibit online postings about the company's products and services all together, or tightly regulate any such comments. If a company chooses to regulate employee online conduct, it should start by prohibiting any postings that are misleading or otherwise untrue. The policy should also require any online posters to reveal their employment relationship with the company, so that there are no hidden material connections. The online poster should also make clear that any comments made are purely that employee's personal opinion, and that they are in no way sponsored by the company. The disclaimer should be clear enough that any reader should reasonably be able to determine that the commenter is not an organizational spokesperson. The policy may also require that, before any online comment is made, the statements are vetted and approved by a marketing department

representative or some other reviewing authority.

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