

Recording Events in the Workplace and Other Social Media Issues

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These days, blurring the line between "professional" and "personal" social networking has never been easier. Risqué pictures of an employee in a club uniform can be posted on Facebook with the click of a mouse, but at great potential cost to the company's reputation. Similarly, with or without harmful intent, an employee can undermine a company's sustained effort in building and maintaining an important trade secret by posting a photo or a recording in a social media venue.

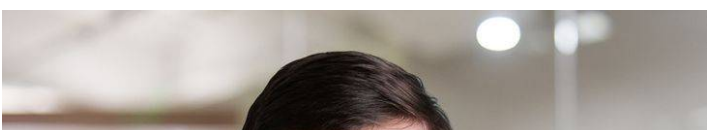
Indeed, the explosion of social networking sites has given employees new avenues for harassment, disparaging other employees and the company, and sharing confidential information. An applicant's social networking site may reveal her race, religion, disability, or sexual orientation, thus exposing businesses to increased risk of a failure to hire claim. A positive LinkedIn recommendation that contradicts the reasons for a poor-performance termination may be used against an employer in a wrongful termination lawsuit.

The posting and sharing of recordings made at the workplace pose a unique problem to employers. With the prevalence of personal digital assistants ("PDAs"), and their video and sound recording capabilities, it has never been easier to capture and share events from the workplace and disseminate those events to the outside world through social media venues. The range of potential issues that can arise from such sharing is numerous. A recording may disclose a company's physical security system; the identity of its actual workforce; and its confidential company trade secrets. Of course there is always the concern of a recording capturing a supervisor or an employee in a compromising position and unveiling that scene to the wider world.

For all of these reasons, employers need to create or revisit social media policies. Just as important as creating a policy, however, is the need to consistently enforce it. And finally, before making any critical disciplinary decisions, call your labor and employment counsel.

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