



Managing Tweets, Posts and Links in the Workplace

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More than 50 percent of Facebook's 800 million worldwide users log on every day, and the fastest growing demographic is age 35 and older. The 100 million active Twitter users tweet 250 million times a day. LinkedIn's 135 million users, who on average are 41 years old and earn in excess of \$110,000 per year, conducted more than four billion LinkedIn searches last year.

The increased use of these and other social media sites is something construction company leaders must learn to manage before problems arise in the workplace.

The proliferation of social media has generated numerous 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.

Employers also 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 that terminated an employee for posting derogatory statements on a password-protected MySpace account was found liable for improperly accessing the postings under the Stored Communications Act of 1986. In another case, an airline was sued after terminating a flight attendant who posted pictures of herself in uniform on a blog.

In 2011, the National Labor Relations Board (NLRB) published an analysis of 14 significant cases involving social media, and the board's Division of Advice has issued opinions on more than 10 such cases. This unprecedented level of NLRB activity can be expected to continue as employers struggle with workplace issues caused by social media.

Under current laws, an employer may regulate employees' engagement in online social networking activities during working hours. Employers also may limit employees from posting disparaging comments or discussing the company's business. To avoid litigation and other risks, such as the disclosure of confidential information, employers should implement a social media policy.

As federal and state laws in this area evolve, employers can expect to face lawsuits or charges relating to their employees' online conduct or for taking adverse employment actions based on employees' online conduct. In the meantime, the legal risks presented by employee social media use can be managed with a policy governing online statements that might affect the employer.

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D. Albert Brannen
Partner
404.240.4235
[Email](#)