

CYBER LIBEL: WHAT EMPLOYERS CAN DO IN THE AGE OF SOCIAL MEDIA

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With social media sites at virtually every employee's fingertips, libel via the internet is becoming much more prevalent. Employees now have the opportunity to log on to their favorite social media site and vent about their co-workers, supervisors, and employers. Employers need to closely watch these sites to protect their companies' and their managers' reputations from being damaged by inappropriate postings. Employers also want to ensure that their corporate officers and managers do not post material that could create a claim against them.

Many state and federal laws touch on social media, but the state law tort of libel might just be the claim that comes into play. Although the tort can vary somewhat from state to state, employers should be aware of this area of the law in order to spot libel when it occurs.

Courts have defined libel as the false and malicious defamation of another, expressed in print, tending to injure the reputation of a person and exposing him or her to public hatred, contempt, or ridicule. In addition, actual damages to the injured party's reputation must be proven in order for the prosecuting party to recover a judgment.

As a threshold matter, any statement that might be considered defamatory first must be in writing for a libel claim—spoken word isn't enough. Furthermore, the written statement must be posted as a statement of fact, and not merely an opinion. This means that if an employee posts a message on Twitter saying that he believes he is underpaid at Company X, this will probably be construed as merely an opinion and therefore, not actionable.

Even so, employers should be careful when considering whether or not to discipline an employee for making posts about the company on social media sites. For

example, if an employer disciplines an employee for posting about their work conditions or benefits, the employer could be held liable under the National Labor Relations Act.

There is a fine line between someone simply expressing an opinion and defaming someone's reputation through words on the latest social media site. In the 21st Century, social media's popularity will only continue to grow. As a result, cyber libel claims will continue to increase as well. If employers implement sound practices and day-to-day policies regarding social media now, these steps will go a long way in preventing libel claims in the future.

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