

OVER-SHARING IN THE WORKPLACE? WHY YOUR COMPANY MAY NEED A TIKTOK AND BEREAL POLICY

Insights
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By now many of us have seen a TikTok video filmed at someone's workplace – a "day in the life" video, someone complaining about their coworkers, supervisors, or customers, or someone talking about an unrelated subject while at the office. And a relatively new platform, BeReal, goes a step further by encouraging users to provide an unfiltered view into their "real" everyday life at random moments throughout the day. Of course, such organic social media clips can be a valuable tool that helps market your brand and build stronger employee relationships – but where do you draw the line? These posts might include an employee during a meeting with co-workers or at a workstation performing their duties – which raises privacy and confidentiality concerns. Moreover, employees flocking to social media to discuss their bosses and general work experiences — whether positive or negative — could lead to other troubles. When these videos go viral, employees may become unofficial spokespersons for your organizations, influencing the conversation about work norms and creating trends that impact employers globally. With these changing dynamics, you may want to set new guidelines for social media use while still ensuring your policies don't run afoul of employment and labor laws. Here are four tips for updating your social media policies to reflect this modern era and stay on top of the latest developments.

1. Ensure Policies Reflect Recent Trends

In the early days of widespread social media use, your policies may have simply prohibited employees from using

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company equipment to post non-work-related content online and required work posts to be business appropriate. But social media use is rapidly evolving in new ways that you may not have anticipated when your policies were first drafted.

What should you know about current trends as you consider policy changes? For one thing, TikTok has [quickly grown in popularity](#) over the past two years with more than a billion monthly active users — which means your employees are likely using the platform and are probably doing so during work hours. The app allows users to upload videos ranging from five seconds to 10 minutes. TikTok then filters videos through their feed using an algorithm and shares them with other users. These videos may receive millions of views, comments, likes, and shares.

While TikTok is popular, it's obviously not the only platform that may feature employees on the job. Unlike TikTok — where users are hoping to go viral — the BeReal app takes a less sensational approach. BeReal doesn't have filters, hashtags, or even followers. In order to view someone's BeReal, you have to request to be their friend.

The app encourages users to provide an unfiltered view into their "real" everyday life. Each day at a different time, the app simultaneously notifies all users to "BeReal" and share a photo within two minutes, regardless of their location. The camera on the app will then take a photo of the user with the front-facing camera, while also taking a photo on the back camera, creating a BeReal snapshot to share with friends.

This app can be potentially problematic for employers. Many times, BeReal alerts occur during work hours, so users end up taking pictures of their workplace or work area. Because BeReal is shared among friends, the app may create a sense of safety and users might forget to censor confidential information. Moreover, while BeReal doesn't have the same 'viral' nature as TikTok, that doesn't stop users from sharing their posts beyond the app on other platforms.

This trend illustrates that the new generation of workers values the transparency these apps provide, with many not considering that their candid photos may also reveal company information.

2. Strike a Balance

Before you decide to curb all TikTok and BeReal posts from the workplace, you should recognize that such posts can pay dividends. Employees who are active on social media may be more equipped to understand the social pulse of the company's customer base. Additionally, allowing employees to contribute to company-sponsored social media posts shows that the company trusts them, which can increase confidence and make employees feel valued.

Furthermore, social media networking may help employees collaborate, share ideas, and solve problems. This can lead to better employee engagement and retention. Moreover, utilizing social media in the workplace can make the company more desirable to potential applicants, particularly Gen Z and Millennial job seekers.

Social media is here to stay, and employers should recognize that policies barring all forms of social media use in the workplace may be unrealistic. In fact, about 72% of respondents to a 2021 Pew Research Center [survey](#) said they use some form of social media and 77% of respondents to an earlier [survey](#) reported using social media regardless of whether their employer had a policy in place.

While not every company can allow on-the-job posts, those with flexibility might want to dedicate resources to creating a mutually beneficial, collaborative policy around social media use in the workplace. For example, allowing employees to share their experiences with your company through social media may promote transparency and provide job seekers with credible information on what it's really like to work for your business.

3. Address the Potential Pitfalls

While employers may benefit from employees' on-the-job social media posts, you should also address the potential dangers, including legal and business concerns.

Of the many legal concerns, the most glaring are privacy protections and confidentiality. As employees capture authentic moments during the workday for BeReal or post TikTok "day in the life" videos, they frequently walk around the workplace recording offices, conference rooms, common spaces, the cafeteria, and more. The videos may inadvertently capture confidential information, such as audio of an internal meeting, the image of a client's name, or a trade secret.

Confidentiality issues also arise with employees who work remotely. For example, an employee may take a video of their innovative at-home workspace while a Zoom meeting is in progress or while their computer screen displays proprietary information.

You should also be cognizant of how allowing employees to post on the job can potentially harm your organization's reputation. TikTok and BeReal attract users who want to be authentic rather than staged, heavily filtered, or otherwise unauthentic. Thus, employees who choose to post on these platforms do not shy away from capturing the "realness" of their job. This, in turn, can lead to your employees sharing information that negatively affects the company, such as human resources concerns (including allegations of unprofessional comments made by colleagues), complaints about working conditions, and products liability issues. All of these discussions raise both reputational and legal concerns that you should take into account.

4. Set Realistic Parameters

With these benefits, risks, and (pop) cultural considerations in mind, what should your modern social media policy include?

If you already have a solid employee handbook, a good place to start is by reminding employees that your existing policies still apply when using social media platforms. For example, an equal employment and harassment-prevention policy would cover discriminatory or bullying behavior towards colleagues whether online or in person. You should remind employees who they should contact when they have a workplace concern. Additionally, let employees know that confidentiality policies apply when they share content, so their computer screens and documents should not be visible in the background.

Depending on the nature of your business and your employees' roles, however, you may want to create a more targeted policy on social media use. For instance, you may have different risks to manage if you encourage employees to engage with your brand, employ a younger workforce, or otherwise have a strong social media presence.

As you likely know, your policy should be in writing and followed consistently. Where to go from there is more complicated. The explosion in social media use has only

highlighted how regulating employee speech is difficult, nuanced, and occasionally backfires. But, of course, there are still some best practices. Consider taking these five steps:

- 1. Develop policies in collaboration with legal counsel, HR, technology, communications, and diversity, equity, and inclusion (DEI) teams.** Be sure the policy matches the company's voice and recognize that this is not a one-template-fits-all exercise.
- 2. Use plain language and examples.** "Do not share patient x-rays, even if their name is covered" is more helpful than "Posting patient information will subject employees to discipline up to and including termination."
- 3. Keep up with guidance from the National Labor Relations Board (NLRB)** – which is subject to change. Note that blanket bans on discussing wages or complaining about supervisors or working conditions are not permissible under federal labor law. The Trump administration issued an employer-friendly rule to evaluate whether a policy interferes with employees' rights to organize and engage in protected concerted activity. However, that ruling is potentially on the chopping block in a pending NLRB case. If the NLRB reverts to the prior, more restrictive evaluation, policies that are currently compliant could suddenly run afoul of the National Labor Relations Act (even in non-unionized work settings). This includes seemingly benign provisions about "respectful" content and limits on who is authorized to speak to the media.
- 4. Confirm applicable state laws.** There is a legislative trend to prohibit employers from requiring employees to engage with social media as a condition of employment or even to ask for their social media usernames as part of a job application.
- 5. Develop a plan for consistently responding to policy violations.** Two employees violating the same rule in the same way should not be treated differently based on whether they tripped the algorithm and went viral. Relatedly, consider the reputational risk of a too-harsh response – someone who is fired for social media content may likely use the same platforms to discuss their termination.

Conclusion

If you have questions regarding your social media policy, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Privacy and Cyber Team](#). We will continue to monitor developments in this area, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.

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