

Insights, News & Events

LIKE, COMMENT, COMPLY: THE RETAILER'S GUIDE TO SOCIAL MEDIA AND WORKPLACE LAW COMPLIANCE

Insights
Jun 15, 2026

Like, Comment, Comply: The Retailer's Guide to Social Media and Workplace Law Compliance

Employee-generated social media content has become a major workplace safety and compliance issue for retailers. If you've spent any time on TikTok or similar platforms lately, you've seen the content – from grainy ring-light footage from a back stockroom to a side-eye to the camera when a difficult co-worker walks away to trending audio layered over a clip of an employee who didn't know they were being filmed. It's relatable, often funny, and most of the time it's harmless. But here's what's also online: your store, your employees, your customers, and, increasingly, potential workplace safety risks and other liabilities. This Insight will explain how social media posting at work can raise labor and employment law issues and offer practical steps retailers can take to stay compliant.

Top Legal Considerations for Retailers

While retailers do not have any legal obligations to monitor every employee's Instagram or equivalent social media platform, you do need to have a process for responding to related workplace issues once you become aware of them. Here are some top considerations for your business:

Workplace Safety Rules

Related People



Varouj Arabian

Of Counsel

818.230.4047

Service Focus

Counseling and Advice

Employment Discrimination
and Harassment

Labor Relations

Workplace Safety

Industry Focus

Retail

The federal Occupational Safety and Health Act's General Duty Clause requires employers to provide a workplace free from recognized hazards likely to cause serious harm. OSHA has recognized retail as a high-risk environment for workplace violence, and that recognition extends to threats that originate on social media. If a current or former employee posts something threatening online toward a co-worker and management is aware of it, the employer must have a protocol in place – a defensible response process is critical.

In addition, you must be aware of any applicable state and local safety rules. For example:

- **New York** has its own framework. The state's Retail Worker Safety Act, which [took effect last year](#), requires covered employers to adopt violence prevention policies, conduct training, and in some cases install panic or alarm buttons ([learn more here](#)).
- **California** [requires virtually all employers](#) to develop and implement workplace violence prevention plans (WVPPs). The Golden State imposes other specific requirements related to hazard assessments, violent incident logs, and annual training. California's definition of workplace violence includes online threats. In late 2025, Cal/OSHA issued proposed revisions to workplace violence regulations, which attempted to carve out electronic messages. While California might head in that direction, the proposed rule is not yet the law. Even still, the proposed carve-out would not exonerate employer liability, rather it would further clarify when an employer must begin an investigation and take action.
- [Updates to Washington state's standards for isolated employees](#) – which took effect January 1 and apply to certain retailers – added training, recordkeeping, and functional requirements related to panic buttons, among other changes.

Hostile Work Environment Claims

EEOC rules add another layer. Employer liability for harassment claims can attach when management knows or should have known about harassing conduct, regardless of whether the conduct happened on company time or on a personal device. Conduct that occurs on private social media doesn't get a free pass simply because it didn't

happen in the break room or on company property or time. If it bleeds into the workplace and contributes to a hostile work environment, it's likely within scope.

Federal Labor Law

Any serious social media policy also has to account for the other side of the equation. Under the National Labor Relations Act, employees have the right to engage in concerted activity about their terms and conditions of employment. A retail associate posting about unsafe working conditions or management practices may be engaged in protected activity even if the post is critical or uncomfortable.

Overbroad policies prohibiting "negative" or "disparaging" content have been struck down by the NLRB repeatedly. Retailers that try to address legitimate safety concerns through an overbroad policy often end up with a different legal problem than the one they started with. The goal is a policy sophisticated enough to address genuine threats and harassment while staying narrowly drafted enough not to sweep up protected activity. Your FP attorney can help you craft a compliant and effective policy.

Want more? Check out our prior FP insight on [what employers can – and can't – do about employee speech in a volatile climate.](#)

3 Practical Steps for Retail Employers

As social media use and trends evolve, you may want to regularly review and adjust your policies and practices to protect your workforce and your business in a way that is balanced, realistic, and compliant with labor and employment laws. Here are three steps you should consider taking now:

- **Update your safety programs.** In California, for example, addressing social media-originated threats in your WVPP is now a compliance obligation. For multi-state retailers, updating workplace violence prevention programs to reflect social media risks makes sense even where it isn't required. Reach out to counsel for more state-specific details and advice.

- **Train your managers.** The store manager is almost always the first person who sees a concerning post or hears about a viral clip. They need to know when to involve HR, when to call legal, how to balance any marketing interests – and, critically, what not to do. Threatening discipline for a post that might be protected activity, or ignoring something that warrants a threat assessment, can be very expensive mistakes.
- **Review your social media policy.** A policy written years ago probably doesn't account for livestreaming, employee personal branding, or WVPP. It needs to be specific enough to address safety and harassment concerns, narrow enough not to chill protected activity, and written in language employees will actually understand.

Want more? Here are FP's [four social media tips for employers as workplace TikToks continue to go viral](#).

Conclusion

We will continue to monitor developments and provide updates as warranted. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information direct to your inbox. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, any attorney on our [Retail Industry Team](#), any member of our [Workplace Safety Practice Group](#), or any member of our [Labor Relations Practice Group](#).