



Employee Use of Social Media

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Social Media Policies

Why Do You Need One?

- Govern how employees use social media
- Educate employee and managers
- To protect confidential information and prevent improper use of social media
- To outline disciplinary procedures

Social Media Policies

How Do You Create One?

- Know and evaluate your risks
- Tailor to company culture and approach to technology
 - Permit limited use at work/ban use at work
 - Create formal corporate accounts vs. personal accounts for sharing information
- With the assistance/review of legal counsel

Social Media Policies

What Should Be Included?

- Description of Social Media and Purpose
 - Define social media
 - No reasonable expectation of privacy
 - Communications are not secure
- Address Use of Social Media on Company Time and Use of Company Equipment
 - Can ban use during work time
 - Can prohibit use on work computers
 - But, is limited personal time more practical?

Social Media Policies

What Should Be Included?

- Prohibit Discriminatory/Harassing Statements
 - Reference company anti-discrimination and anti-harassment policies
- Prohibit Disclosure of Confidential Information
 - Section 7 of the National Labor Relations Act (“NLRA”) - Protected Activity exception
 - Specify no disclosure of trade secret information – provide examples
 - Reference other company policies – confidentiality, electronic use/e-mail, cellular phone policies

Social Media Policies

What Should Be Included?

- Prohibit Defamatory/Disparaging Comments
 - Section 7 of the National Labor Relations Act (“NLRA”) - Protected Activity exception.
 - Can prohibit comments that disparage customers, vendors
 - Carve out whistleblower protection - employees can voice good faith concerns about a law or regulation that may have been violated, company conditions affecting public health and safety, and suspected privacy and securities fraud breaches
- Address Regulatory Requirements

Social Media Policies

What Should Be Included?

- Copyright, Patent or Trademark Infringement
- Require Disclosure and Disclaimer if Employees Endorse Company or Services
 - Disclosure – Federal Trade Commission (“FTC”), Truth In Advertising requirements.
 - “My employer, ABC Company, gave me these great products to try.”
 - FTC “Frequently Asked Questions” :
<http://www.ftc.gov/bcp/edu/pubs/business/adv/bus71.shtm>
- Address Disciplinary & Reporting Procedures

Section 7 of the NLRA

Employees shall have the right to self-organize, to form, join, or assist labor organizations, to bargain collectively . . . **and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection**

- This means you can't prohibit employee posts that can be seen as an attempt to improve working conditions. For example,
 - Posts that criticize operations impacting employees
 - Posts discussing wages, hours, & other working conditions
 - Posts that disparage supervisors or management

Section 7 of the NLRA

- Conduct needs to be Protected: it has to relate to the terms and conditions of employment or seek to involve other employees in issues related to employment
- Conduct needs to be Concerted: activity that is engaged in, with, or on the authority of other employees, and not solely by and on behalf of the employee himself
- Applies to all employers; Interpreted Broadly
- Specifically carving out Section 7 in policy does not suffice

Unlawful Social Media Policy Provisions – Case Examples

- **Policy's Rules on Communicating Confidential Information Too Broad**
 - Don't release confidential client, team member or company information
 - Don't reveal non-public company information
 - Don't reveal any topic related to the financial performance of the company
 - Board held provisions would reasonably be interpreted as prohibiting employees from discussing and disclosing information regarding their own conditions of employment

Unlawful Social Media Policy Provisions – Case Examples

- **Policy's Prohibition On Revealing Personal Information, Photographs & Employer's Logos Was Too Broad**
 - Provision precluded employees from revealing, including through the use of photographs, personal information regarding coworkers, company clients, partners, or customers without their consent
 - Board held could reasonably be interpreted as restraining employees from discussing their wages or other terms of employment

Unlawful Social Media Policy Provisions – Case Examples

- **Policy's Prohibition On Revealing Personal Information, Photographs & Employer's Logos Was Too Broad**
 - Provision precluded employees from using employer's logo's and photographs of Employer's store, brand or product without written authorization
 - Too broad because an employee could not post pictures of employee's carrying a picket sign depicting the employer's name or wearing a t-shirt portraying the employer's logo in connection with a protest involving the terms and conditions of employment

Unlawful Social Media Policy Provisions – Case Examples

- **Policy's Prohibition's About Respectful Communications and Online Tone Were Overbroad**
 - Treat Everyone With Respect: Offensive, demeaning, abusive or inappropriate remarks are as out of place online as they are offline. We expect you to abide by the same standards of behavior both in the workplace and in your social media communications
 - Board held this proscribes a broad spectrum of communications that would include protected criticisms

Unlawful Social Media Policy Provisions – Case Examples

- **Policy's Prohibition's About Respectful Communications and Online Tone Were Overbroad**
 - Adopt a friendly tone when engaging online. Don't pick a fight. Social media is about conversations... Remember to communicate in a professional tone. . .
 - Board held overall thrust of this provision is to caution employees against online discussions that could become heated or controversial, like working conditions or unionism

Employee Discipline – Case Examples

- **Employee's Facebook Postings About Tax Withholding Practices Were Protected Concerted Activity**
 - Employees discovered they owed state income taxes related to earnings of employer
 - Employee posted a statement on Facebook about being upset over the unpaid taxes (& called one of the owners an asshole); other employees commented and agreed
 - Employee fired for disloyalty
 - Board held termination was unlawful because the Facebook conversations related to terms and conditions of employment and involved group complaints

Employee Discipline – Case Examples

- **Employees' Facebook Postings About Supervisor and Promotion Selection Were Protected Concerted Activity**
 - Promotion was discussed among co-workers
 - Employee posted frustration on Facebook, others joined in and complained about mismanagement and infrequent raises
 - One employee was terminated and others disciplined
 - Board held unlawful because employees had right to discuss quality of supervision & opportunity to be considered for promotion as these were important terms and conditions of employment

Employee Discipline – Case Examples

- **Employee's Facebook Postings About Manager's Attitude & Style Were Protected Concerted Activity**
 - Employees had expressed concerns to management about the negative attitude of the Operations Manager
 - One employee then posted there was too much drama at the plant; another joined in and complained about being written up for being a “smart ass”, that there were not enough supplies, and that they were going to have to work on Saturday; a third employee joined in and said she hated the place and couldn't wait to get another job – largely because of the operations manager
 - Third employee was then fired
 - Board held unlawful because comments were a continuation of earlier complaint to management and because it was a part of a discussion about employees' shared concerns about the terms and conditions of employment

Employee Discipline – Case Examples

- **Employee Who Posted Offensive Tweets Was Not Engaged in Protected Concerted Activity**
 - Newspaper Employee tweeted critical comment about one of his supervisors; did not evidence that he had discussed his concerns with any co-workers; employee also tweeted matters related to the topics of his columns and criticism of an area television station
 - Employee was terminated for derogatory comments in social media
 - Termination was not protected and concerted: it did not relate to the terms and conditions of employment or seek to involve other employees in issues related to employment.

Other

- Maryland Facebook Law; Stored Communications Act; Electronic Communications Privacy Act
- Review of other policies – E-mail/Intranet, Non-Solicitation Policy, Confidentiality
- Social Media and Applicants
- Practical Tips