

Employment Alert

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Managing Social Media in the Workplace

By Nicole A. Flynn, Esq. and Lynn Vuketich Luther

Employees use Facebook, Twitter, LinkedIn, blogs, and other social media sites both personally and professionally, often on a daily basis. Facebook alone boasts more than 500 million active users, with 50% of active users logging on every day. Facebook also claims that people spend over 700 billion minutes per month on its site. Because of the widespread use of social media, employers of all types, even those employers who do not actively use or provide technology to its employees, must take steps to protect themselves from the potential pitfalls of social media.

One of the most important policies in an employer's handbook is the policy that governs the use of electronic equipment. Most employers already have such a policy, but many have not updated it to reflect the rapidly growing issues associated with the use of social media. There may also be a few employers who do not give employees access to electronic equipment, and therefore have no such policy in place. That strategy should be revisited, however, now that an employee's personal use of social media can have such a significant impact on the workplace. For example, employees may use social media to express opinions about their employer, their employer's products and services, fellow employees, vendors, competitors, or customers. Employee comments can expose the employer to liability for defamation, false or misleading advertising, breach of privacy claims, harassment, or discrimination.

Although social media presents certain risks, it can also be advantageous to employers because many employees use social media to engage in legitimate "networking" activities. Accordingly, when developing a social media policy, employers should assess their workforce, the extent to which social media may help grow their business, the extent to which employees use social media to accomplish their tasks (marketing, sales, etc...), and the legal implications of using social media for advertising purposes.

When drafting a social media policy, employers should consider including the following basic provisions: 1) notice to employees that they have no expectation of privacy and that online transactions using company resources can and will be monitored; 2) a clear stance on the use of social media during working hours and using company property; 3) prohibition against using social media to discriminate, harass, threaten violence, or otherwise violate company policy; 4) prohibition against using social media to make defamatory statements regarding the company, its employees, customers, competitors, or vendors; 5) prohibition against the dissemination of proprietary or confidential information; and 5) a reporting procedure for security breaches. Employers may also consider imposing restrictions on how supervisors and management personnel may interact with their subordinates via social media. A well crafted social media policy will provide employers with protection, yet should not violate employees' rights to engage in protected concerted activity under Section 7 of the National Labor Relations Act.

Employers should simultaneously evaluate and update their electronic media, harassment, and confidentiality policies. Together, these policies, if well crafted and comprehensive, will do much to protect employers from potential liability and advise employees of employer expectations. Em-

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employees should have a clear understanding that inappropriate behavior (via social media or otherwise) that affects the workplace will not be tolerated, even if it is engaged in off company premises and on an employee's own time.

As these examples illustrate, managing social media in the workplace presents vexing problems for even the most accomplished HR professionals. In the arena of social media policies, one size no longer fits all, so careful consideration of all aspects of your business is imperative to the development of an effective social media policy.

If you have any questions regarding this or any other workers' compensation or labor and employment law issue, please contact any member of the Labor and Employment Section at 419-241-6000 or visit our website at www.eastmansmith.com.



Nicole A. Flynn is a member of Eastman & Smith Ltd. Her practice consists primarily of representing employers in labor disputes and collective bargaining and before administrative agencies such as the OCRC, EEOC, NLRB and the Industrial Commission. Her experience includes work before federal and Ohio state and appellate courts.

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