

Employer Rights and Responsibilities for Employee Facebook, MySpace, Twitter, Blogs, and other Social Networking Postings

By: Ann Scheer, Esq.

An employee shows her supervisor another employee's Facebook or blog entry in which the employee is complaining about their supervisor, making derogative comments about co-employees or discussing information about a customer. What can and/or should an employer do with this information?

Employees used to complain about their trials and tribulations at work to their spouse, over coffee with a friend or to a friendly bartender. For the most part these comments and complaints were unknown to the employer, co-workers

and customers. Even if their employer did hear something about the employee's comments, it was hard to determine what was actually said. This has now changed with employees now regularly venting about work on social networking sites and blogs. Comments may now be posted on open sites that anyone can read, and even if put on a site with restricted access

may be forwarded by those with access to many others. Comments posted on these sites may remain accessible despite efforts to remove them. What was said is now clear and indisputable. Whether the employer discovers the comments itself or learns of the comments from an angry customer or co-worker, the employer may feel a compelling obligation to "do something about it."

Generally, when faced with this situation an employer should react in the same manner as it would had the comment had been made at work. For example, if an employee discloses confidential company or customer information in violation of company policies it makes no difference whether the disclosure occurred during work hours, took place on or off the work employer's premises, or was made using a home computer instead of a work computer. Similarly, illegal harassment by an employee of a co-worker or by a customer or vendor of an employee

must be investigated and appropriate action taken by the employer regardless of the venue or whether it happened on or off the clock. An employer in these situations should investigate and take action that is consistent with its policies and practices for similar infractions in the workplace.

Employers need also be careful that its search for Internet "dirt" on an employee not be viewed as

discriminatory or retaliatory. For example, if an employee has just made a request for FMLA leave, filed a wage claim, or spoken with an OSHA inspector, this would not be the time for an employer that doesn't routinely monitor employees' personal social networking postings to suddenly begin searching the Web for evidence of employee misconduct. That said, the fact that an employee may have engaged in a legally protected activity does not shield the employee from a good faith investigation of alleged wrongdoing. If a co-worker or customer raises a concern regarding an objectionable social networking posting by the employee, an employer could, and should, conduct an investigation in accordance with its workplace policies.

In checking an employee's personal social networking postings, employers should never use trickery or hack into a restricted site to which they don't have access. Doing so can subject an employer to a lawsuit for invasion of the employee's privacy. Employers also need to be very



SILVER ASSOCIATION PARTNER

Southern Auto Auction

Wholesale auto auction

For more information, please contact New Hampshire representative Scott Rodgers at 866-827-0822 or by e-mail at srodgers@saa.com.



Scott Rodgers



careful not to violate employee rights under the National Labor Relations Act to “self-organize ... and to engage in ... concerted activities for the purpose of collective bargaining or other mutual aid or protection...” The key here is if an employee is engaging or attempting to engage with one or more other employees to help each other with situations in the workplace such as perceived safety violations, wage issues or any other “term or condition of employment” these “conversations” whether face to face or through postings are generally protected by this law and an employer is prohibited from taking any adverse action against an employee for having engaged in such activities. This is a tricky area and an employer faced with such a circumstance is well advised to consult with an attorney very familiar with this area of the law before taking any adverse action against an employee.

Employees often mistakenly believe that an employer can't take any action against them for out of work statements or actions and are shocked to learn that their employer is disciplining them or even terminating them for something they

have posted on a social networking site or blog on personal time, at their own home and using their own computer. In order that employees have a clear understanding of employer expectations and the consequences of their bad behavior, it is important that employers develop and disseminate policies with regard to social networking sites and blogs, and to clarify existing policies (such as confidentiality rules) so that employees understand that they are applicable inside and away from the workplace, and regardless of whether the prohibited conduct occurs in an Internet forum. These policies may be of critical importance in defending any adverse employment action your company takes against an employee for an objectionable posting. Please contact anyone in our group for assistance in reviewing or developing social networking policies for your workplace. ▲

This article was provided by the Devine, Millimet & Branch Labor, Employment and Employee Benefits Group. For further information, send e-mail to employment@devinemillimet.com.

Arbitration – continued from page 1

dealers with just a few days notice. GM gave wind-down notices to six GM stores and also gave such notice to eight dealers who have Cadillac points. GM's plan would leave a single Cadillac point in the state. In all, 20 dealerships are, or might be, affected by the closings.

Exactly who has filed for arbitration is kept confidential by the American Arbitration Association, as required in the federal law passed in late 2009 in response to the unwarranted closings of thousands of stores nationwide. GM and Chrysler repeatedly claimed that dealers cost the manufacturers money and that the closings would save billions. As the hearings before congress revealed, dealers cost the manufacturers no money because they buy the inventory, the land, the buildings and hire the employees to sell the cars.

The arbitrations must be completed by June 14, 2010 (although the arbitrator may decide to extend the arbitration to July 14, 2010 for good cause).

Nationwide, more than half of the 2,789 dealers eligible for arbitration have filed. ▲



Remember When...

...Business was a face to face experience.
...Experiences inspired innovation.
...Innovations shaped our industry.

At Manheim New England,
 your experiences drive our innovations.

Share your stories, experiences, and photos with us at:
www.facebook.com/manheimne

Manheim
 New England

WHERE EXPERIENCE MEETS INNOVATION
 123 Williams Street / North Dighton / MA / 02764
 508.823.6600 / 508.823.0006 / www.manheimne.com