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Social media and blogging: What's your policy?

Blogs and social networking sites such as Facebook, MySpace, Twitter and LinkedIn are tools used for personal and professional networking, sometimes at the urging of employers. Since technology is frequently ahead of the law, the law as it relates to the use of these sites and blogging is still developing.

Companies that encourage employees to blog or use social networking sites to further business and networking connections must take steps to manage the risks that come with the benefits of encouraging an online presence by employees. Companies that don't encourage their employees to develop an online presence must still be proactive to protect their interests from common pitfalls resulting from employee Internet use.

Use of these sites and blogs by employees can create a variety of legal issues for employers. These include:

- **Defamation:** Defamatory remarks on a blog or social networking site regarding a competitor or the quality of its products/ services or about a third party or another employee could be imputed to the employer under certain circumstances.
- **Copyright or trademark infringement:** Posting copyrighted materials or trademarks could result in claims for misuse of a third party's intellectual property. Employees who carelessly post protected information online may place their employer at risk if the online activity is encouraged by the employer, done for the benefit of the employer or as part of the employee's job. Further, use of trademarks in posts may draw scrutiny from large companies with widespread monitoring and a policy of aggressively defending its intellectual property.
- **Disclosure of confidential information:** Disclosure of a third party's confidential information can lead to a claim for invasion of privacy or misappropriation of trade secrets.
- **Harassment/discrimination:** Employees who post harassing or discriminatory statements directed at employees, customers, vendors or other company-related third parties may expose an employer to liability under certain circumstances.
- **Wage and hour:** Employees who blog or engage in online activities at the request of the employer may be engaged in compensable work. If employees spend time maintaining a blog or social networking site as part of their job, time spent in the performance of these duties may count as "hours worked" under state and federal wage and hour laws, and those hours must be included in any overtime calculations. Failure to do so could lead to wage claims under state or federal law.

Employees' online activities may have other harmful effects on employers, even if the employees are well-intended and make innocent or inadvertent disclosures.

For example, employees may disclose confidential information belonging to the employer (e.g., with respect to a new product in development or timing for its launch) in casual "conversation" online. False statements or recommendations made by employees of publicly traded companies regarding the employer's product or services may run afoul of Federal Trade Commission regulations.

Managing risk

Employers who encourage blogging or social media use for professional purposes should promulgate a clear policy so that employees are familiar with the employer's expectations for online activities. Such policies should include clear anti-discrimination/harassment notices, warnings about the disclosure of confidential information, prohibitions against defamatory postings and guidelines as to what company information is off-limits.

Employers with sensitive customer and/or patient information should specifically advise employees as to confidentiality expectations and warn against disclosure.

Companies also should notify employees about how involved they plan to be on the site. Employers must require employees who blog or maintain a social networking site as part of their job and who are not exempt from the Fair Labor Standards Act to record time spent "working" on the blog or site.

Whether or not employers encourage blogging or the use of social media for professional purposes, all employers should set clear boundaries for Internet use at work. This includes instructing employee as to whether the site or blog may be accessed using work equipment and under what conditions.

Companies should notify employees that work policies apply equally to online activities (e.g. anti-harassment/discrimination policies, confidentiality, etc.). In addition, employers should advise employees of the consequences of violating these policies.

In addition, while Internet use policies should address an employee's online conduct both on- and off-duty, employers cannot overreach. Laws may limit or preclude an employer from prohibiting certain speech or for taking actions against employees for engaging in certain conduct.

Managers and supervisors should be trained on the content of any Internet use or social media policy as well as their implementation. Any policy should be consistently implemented and uniformly applied, as having a policy that is not enforced may be as harmful to a company in the event of litigation than not having a policy at all.

Finally, given the constant flux of technology, employers should regularly review their policies governing online conduct. If employers decide to discontinue a company-sanctioned blog, this should be communicated clearly and in writing to all involved employees.

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