

## Social Media in the Workplace

By Claudia St. John, SPHR

It's time to face facts. Virtually everyone everywhere is on social media – or at least it seems that way.

Whether on the desktop computer or on a tablet, on a smart phone or on a laptop, at work or at home, access to and use of social media is everywhere. According to the Pew Research Center, 73% of all US adults have a social media account. Approximately 90% of adults age 18-30 are using social networking sites, 78% of adults age 31-49 are online, and 65% of adults ages 50-65 are using social media. And according to a survey by the staffing agency Intelligent Office, one-third of workers use social media **at work for at least an hour a day**, and a quarter of respondents said they wouldn't work for a company that didn't allow them to use social media while they are on the job.

The implications of this are significant. Employers have been held vicariously liable for harassing or discriminatory behavior by employees using online platforms. They have had to address employees sharing important proprietary information online. And they've had to address situations where employees have made derogatory, offensive remarks about important clients online.

Sometimes it feels like a free-for-all. But it doesn't have to. We recommend you consider implementing a social media policy to help your employees know what they can and cannot say online.

Your social media policy has to balance your need to manage your employee's social media use with their legally protected speech. Accordingly, you must affirm that the policy is not intended to interfere with your employees' rights under the National Labor Relations Act (NLRA) to "engage in concerted activities" to discuss the terms and conditions of their work and workplace. In particular, it needs to recognize that employees have the right to carry on conversations online and on social media sites regarding employment, wage and working conditions, and that your policy is not designed to interfere with this protected speech. Here is what it should cover:

- **Social Media Use:** Rather than attempting to ban the use of social media at work (which, given the wide use of smart phones, is close to impossible and could violate an employee's rights under the NLRA), indicate when and where it is acceptable and safe to check social media, such as during breaks and while at lunch and in the break room only.
- **Purpose of the Policy:** Describe in your policy what speech is NOT protected and give examples. Whether it is in regard to online activity at the workplace or at home, you can prohibit your employees in engaging in speech that can be construed as bullying, discriminatory, harassing, abusive, offensive to coworkers, clients or vendors or otherwise inappropriate, as long as it is not part of an effort by the employee to discuss employment or working conditions with other employees. Be clear also that employees must not engage in behavior that violates local, state or federal law (such as ownership or dissemination of certain forms of pornography).
- **Confidential and Proprietary Information:** Ensure your policy is clear about ownership of confidential and proprietary information and that such information cannot be disseminated by employees, either online or otherwise. Take the opportunity to remind employees that customers AND competitors monitor content on blogs, LinkedIn and other social media sites, so what they say matters.

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- **Require Disclaimers:** If your employees wish to comment on a blog or online forum that is related to your company's business or industry, you can require that they include a statement disclaiming that the employee's postings on this site are his/her own and do not represent the employer's positions, strategies, or opinions.
- **Be Specific:** Include examples of proprietary and confidential information that is not owned by the employee, such as trade secrets, client lists, ongoing and prospective project work, etc.. Also, give examples of content that is owned by the employee (such as personal blog posts on topics unrelated to the organization).
- **Right to Monitor:** If you intend to monitor your employees' online behavior, make sure you advise them accordingly.

In addition, take the time to go over the policy with your employees. Make sure they know what is expected of them, as employees may not know what's okay and what is not okay to do online, or what is private and what is business-related. The more you educate, the more likely you will be to avoid problems.

And, as with many policies, we recommend that you tailor it specifically to your own workforce – rather than simply copying another company's. For example, if employees are handling confidential material such as medical claim forms or credit card data, ensure your policy addresses that content specifically. If your employees regularly engage in online activities for work, such as managing your company's online presence and reputation, address what is and is not acceptable.

Finally, this is a dynamic area of law and employment policy. Standards and practices – as well as government agencies and the courts – are having a tough time keeping up with the ever-changing face of online activity. So, once you have a final policy in hand, be sure to have it reviewed periodically, and always seek expert advice before taking action against an employee on matters related to online behavior. As with all policies and practices, be legal, be fair, and be consistent.