



Electronic Communications and Social Media: Managing Employer Risks with Clear Policies

By Jennifer A. Prada

For many of us, it is hard to remember a time when conducting our work duties did not involve extensive use of email communications and the internet. For this reason, most employers long ago recognized the need to implement email and internet use policies for their employees. Nonetheless, internet use has rapidly changed as a result of the proliferation of interactive social media, with sites like Facebook, LinkedIn, and Twitter. When employees engage in such internet social networking, the line between workplace and personal conduct can be easily blurred. The expansion of such internet use serves as an important reminder to employers to: (1) revisit existing electronic communication policies covering employee internet and email usage generally; and (2) formulate policy language establishing guidelines and expectations concerning employee use of social media and networking.

Elements of an Effective Electronic Communications Policy. An electronic communications policy should, at minimum, advise employees that:

- All electronic devices provided by the employer (computers, phones, PDA's, laptops, etc.) are employer property and are not private; that the devices should be used for business purposes only (or may be used for personal purposes under only specified limited conditions); that all messages, sent or received, are subject to review; and that the email system and all messages distributed on it are the property of the employer, not the employee.
- Email and other electronic data and communications on employer-owned devices and systems are not to contain or be used for the distribution of any offensive or unlawful messages, including messages containing inappropriate sexual comments or derogatory remarks or images regarding race, gender, age, sexual orientation, political beliefs, disability, national origin, or any other protected class.
- Violation of the policy subjects the employee to discipline, up to and including discharge.

Elements of an Effective Social Media Use Policy. While employers generally cannot control their employees' online conduct away from the office, employers can manage potential risks arising from employee social media postings and related blogging by implementing and enforcing a policy governing online statements *affecting* the employer and its interests. A sound policy should, at a minimum, include the following:

- **A definition of social media for clarity and to assist employees in understanding the policy's breadth.** For example, the term "social media" may be defined to include such items as blogs, wikis, social networks and virtual worlds.
- **Acknowledgment that employees: (1) will use the internet; and (2) have the right to determine how they spend their personal time.** It is unreasonable (and fruitless) to seek to prevent employees from using the internet. Nor is it wise to lead employees to believe that their personal life is being unreasonably controlled. Instead, the policy should limit itself to defining the areas into which employee personal internet and social media use should not stray, thereby fostering a positive culture of mutual respect and cooperation.
- **Clear notice that the employer has the right to manage its public image.** Employees should be advised to ensure that they have permission from the employer's management before publishing any information about the employer, including but not limited to current or potential employees, clients, customers, or competitors.

- **Clear notice that employees are prohibited from sharing confidential or proprietary information.** Confidential or proprietary information should be defined in the policy to include whatever is relevant to the employer's business, including sales, financials, employees, strategy, client lists, or any other information not publicly released. Employees should be advised to seek advice from the employer's management if they have any questions regarding the appropriateness and/or potential impact of publishing any particular piece of information. Employees should be put on notice that publishing confidential or proprietary information could potentially lead not only to discipline, including termination, but possibly also to a lawsuit being filed against them.
- **Guidance that employees should use disclaimer statements to avoid inadvertently attributing their personal views to the employer.** Employees who publish information and/or opinions on the internet are creating a public image of themselves and may, by extension, create a public image of their employer. To avoid such a result, employees should be encouraged to make it clear, by using a disclaimer statement, that any views expressed are the employee's alone, and do not represent the views of the employer.
- **A clear warning that employees should be respectful to all parties referenced in or affected by their publication.** Employees should not make untrue, disrespectful, or unprofessional comments about others. In particular, at no time should employees make publications that could be interpreted as discriminatory or harassing.
- **A clear warning about the consequences of choosing to make prohibited, unprofessional, or otherwise harmful publications on the internet.** Regardless of whether employees are employed at will, they should be reminded that violation of the social media usage policy will be grounds for discipline, up to and including termination.

Of course, to be effective, any electronic communications and/or social media usage policies must be enforced. To this end, any policy violation should not be overlooked and should be promptly addressed in accordance with the policy itself and any related policies and practices.

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