

Useful Guidelines for Creating an Effective Social Media Policy

Amundsen Davis Intellectual Property Alert
June 17, 2016

Organizations must consider not only IP issues, but also employment laws when drafting social media policies. Such policies invoke a unique balancing of concerns between your company's attitude toward social media use in the workplace, the nature of your business, special characteristics of your employees and workplace environment, and the legal restrictions on chilling concerted activity protected under section 7 of the National Labor Relations Act (NLRA) in both unionized and non-unionized workplaces.

Many states, including Illinois and California, have enacted legislation barring employers from demanding access to employees' personal social media accounts. Though applicable laws vary by state and social media policies will reflect your company's unique culture, a few general directives may still be made:

1. Designate a specific employee(s) to post to social media on your company's behalf, officially incorporate that task into the applicable job description(s), and make clear that no other employee is authorized to post on the company's behalf. Separate, more detailed guidelines regarding official company posts (in addition to the basic social media policy) would be more advisable for each such person.
2. Any corporate-level policy is only as good as its enforcement. Your company should ensure that its policies are widely available and consistently enforced.
3. Immediately respond to complaints of harassment or discrimination through or by social media as with non-social media complaints.
4. Create internet monitoring/alerts to enhance awareness of discussions relating to your company.
5. Revise confidentiality agreements/definitions to address social media posts, while being mindful of the NLRB's aggressive stance against language that could be construed to impinge upon employees' right to engage in protected concerted activities, including union organizing.
6. Provide adequate training to employees and HR representatives on social media policies, accepted/prohibited conduct and how the company will monitor

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each.

7. Review and update your policy on a regular basis to comport with any developments in employment and data privacy laws while maintaining pace with evolving technologies.

8. Consider whether your policy will apply only to the use of social media in the workplace and with your company's IT resources, or whether it will also apply to use outside of work. Companies may lawfully prohibit employees from accessing personal social media accounts during working time but complete bans – even bans on accessing such sites through company provided computer and communications equipment – will likely be viewed by the National Labor Relations Board (NLRB) as overly broad and impermissible restrictions on employees' right to engage in concerted activity. In 2014 the NLRB reversed prior precedent to rule that both union and non-union employees have a legally-protected right to use their company-provided email accounts to discuss terms and conditions of employment and engage in union organizing efforts during non-working time. The NLRB has repeatedly found employees who complained about working conditions on social media – even some whose complaints were laced with profanity – to have engaged in protected concerted activity and held the employers who terminated or punished them liable.

9. Carefully consider the breadth of any restrictions on the use of your company's name, logos, trademarks or advertisements in your policy. While requiring your employees to respect all laws or regulations (including intellectual property laws) is acceptable, policies that may be reasonably read to include prohibitions against the fair use of logos, copyrights or trademarks in the course of protected concerted activity have been deemed unlawful.

10. Consider explicitly stating that your policy is not intended to preclude employees from engaging in activity protected by Section 7.

While relatively simple in appearance, social media policies can be shockingly complex. But, by carefully considering the unique nature of your company and its industry, expectations that are clear, fair and legally appropriate may be set between you and your employees.

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