

Social Media in the Workplace

A Webinar Series



Presented by:

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“Post-Hire Use of Social Media: Legal Considerations”

Speaker



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Renee Jackson represents employers in all areas of labor and employment law, focusing primarily on employment counseling and litigation. She defends employers against allegations of discrimination and harassment in both state and federal courts, and at agencies such as the Massachusetts Commission Against Discrimination and the EEOC. She also counsels both domestic and international employers on the various employment law issues they face in the United States, including restrictive covenants, wage and hour issues, workplace policies, discrimination, reductions in force, employee discipline, all aspects of hiring, and the use of social media in the workplace. Renee also has experience with traditional labor relations, employee benefits, and general civil litigation.

During Employment: Employee/Employer Use and Misuse

▶▶ Opportunities:

- Create collegial/community atmosphere
- Shared experiences and stronger working relationships
- Employee engagement
- Communication/PR tool
- “Listen” and respond to employees, applicants, customers, and competitors
- Brand or business development
- Recruiting and hiring

▶▶ Internal Risks:

- Awkward/potentially harassing situations
- Decrease in efficiency/productivity

▶▶ External Risks:

- Unauthorized disclosure of confidential or proprietary info
- Corporate embarrassment, PR issues
- Brand destruction/erosion
- Unauthorized disclosure regarding layoffs, litigation, mergers, acquisitions, investigations, negotiations, strategy

During Employment: Creating A Policy

- ▶▶ Broadly define “social media.”
- ▶▶ Address personal/professional and on/off duty use of social media.
 - Applicability: to all employees using social media during working hours OR during non-working hours if the employer is identified, known, or presumed
 - Regulate at the nexus between posted content and the employer.
- ▶▶ Cross-reference other policies where social media could be implicated, i.e. privacy, confidentiality, reference, harassment, IT policies.
- ▶▶ Instruct employees to:
 - keep company logos/trademarks off personal social media,
 - not mention company, other employees, or customers in posts,
 - and not post/blog during working hours.
- ▶▶ Instruct employees to use good judgment, take personal and professional responsibility for content, and use appropriate privacy filters (but even with privacy filters, information may become “public”).

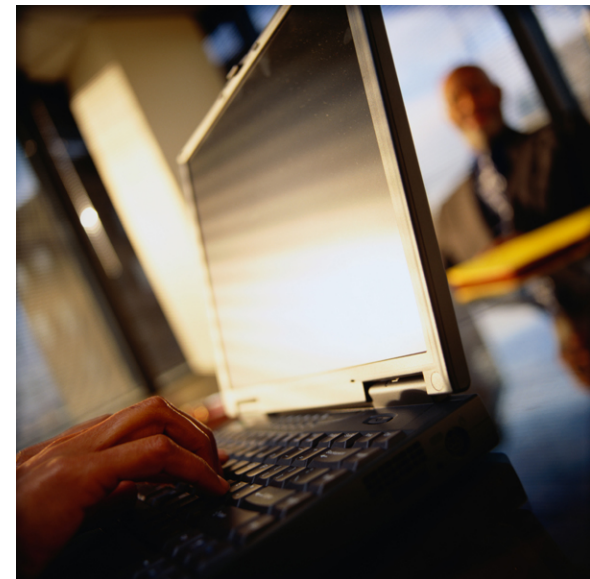
During Employment: Creating A Policy



- ▶▶ Determine whether available guidance applies to communications with customers or endorsement of products.
 - FINRA Regulations
 - FTC Guides
- ▶▶ Use appropriate disclaimers.
- ▶▶ NLRA Section 7 catch-all:
 - “Nothing in this Social Media policy is intended to prohibit employees from communicating in good faith about wages, hours, or other terms and conditions of their or their co-workers’ employment.”
 - Save the policy on its face, but will not save actions based on the policy.

During Employment: Creating A Policy

- ▶▶ Prohibit posting of false or defamatory information about the company or its employees, customers, or affiliates.
- ▶▶ Prohibit use of company e-mail address to register for social media.
- ▶▶ Inform employees that misuse of social media can be grounds for discipline.
- ▶▶ List name of someone within organization to contact with questions.
- ▶▶ Train all employees on policy .
- ▶▶ Enforce in uniform and non-discriminatory manner.



During Employment: Investigations, Discipline, and Termination

▶▶ Best Practices:

- Use caution with password-protected, invitation-only, or otherwise “private” websites.
- Access public/company/authorized information only.
 - Don't pressure employees to disclose personal usernames/passwords.
 - Don't use “found” personal passwords.
 - Use anonymous, other employee, or third party information/tips.
- Be consistent with use of social media during investigation process and resulting discipline.
 - Consider Section 7 issues before discipline or termination.
- Decrease employee expectation of privacy by creating policy in advance.
- Cover all forms of technology/media: internet, computer, social media, PDAs.

Conclusion

- ▶▶ Emerging workplace issue with little case law
- ▶▶ Understand the legal restrictions
- ▶▶ Don't ignore the risks
- ▶▶ Craft appropriate policies and procedures
- ▶▶ Apply policies in consistent and non-discriminatory
- ▶▶ Stay current with legal developments
- ▶▶ Seek guidance from counsel
- ▶▶ **DON't BE THE TEST CASE!**



Upcoming Social Media Webinars

January 10, 2012: “Talking With Your In-house Counsel”

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*Thank you &
Happy Holidays!*