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Developing a Social Media Policy

By Kenneth B. Chang, Esq.

Facebook, Twitter, and other social media tools have created exciting new opportunities to connect with customers and otherwise conduct business online. However your company chooses to embrace social media, it is clear that employers need to be mindful of their employees' online activities. An inappropriate YouTube video, a blog entry about a competitor, or a tweet about a difficult customer could result in serious and potentially irreparable damage to an employer's reputation. By the time the employer realizes what's happening, it may be too late to contain the damage. In the worst cases, these incidents result in substantial liability or public relations disasters. And the Internet is slow to forget.

Employers can effectively reduce these risks by establishing and adhering to a social media policy. Upon receiving the policy, employees will know what to expect, be wary of potential pitfalls, and have realistic expectations about Internet privacy. With proper education and consistent enforcement, a social media policy can provide a basis for adverse employment actions that may be necessitated by an employee's online conduct.

To be truly effective, a social media policy must be carefully tailored to the unique needs of each employer. The following general considerations may provide a useful starting point.

- Define social media. This definition should be flexible enough to accommodate any new technologies that may emerge before the next policy review (like, say, photon-chatting or quantum-memoranda).

- Advise employees that they are personally responsible for anything that they publish, and that anything published will likely remain freely accessible on the Internet for a very, very long time.
- Clearly warn that an employee's use of social media can impact the employer's image, and that the employer has a right to protect that image. The policy might provide tips on using social media for personal purposes while limiting the effect on the employer, such as maintaining separate accounts for personal and professional uses.
- Consider including specific examples of content that will be deemed as creating an unacceptable public image for the employer. This may include inappropriate photographs, disclosure of confidential information, or unprofessional remarks about competitors or customers.
- Protect against unapproved references to customers, clients, and other parties associated with the employer.
- Warn that employees are not permitted to speak on behalf of the company without express permission. Consider requiring employees to post a disclaimer indicating that their views are their own and do not necessarily reflect those of the employer.
- When addressing issues relevant to the company, employees should make full disclosure of their affiliation with the company, even if they are participating only in a personal capacity. A hidden company affiliation, if discovered during a discussion about the company, may impugn the credibility of the employee and, by extension, the company.
- Remind employees to be respectful. Employees should not pick fights or be lured into arguments or flame wars-especially in discussions related to company business. When conflicts arise, employees should confer with their supervisors to ensure that a response, if any is needed, will be perceived as positive and productive.
- Direct employees to respect copyright, fair use, defamation, and financial disclosure laws. In addition, employees should be

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warned not to publish proprietary, confidential, or otherwise protected information.

- Warn that any violation of the policy can result in appropriate discipline up to and including termination. If this is an at-will employment relationship, then this policy is an excellent place to include another reminder.

To protect against public relations disasters and legal liability, employers should ensure that an effective social media policy is in place, shared with employees, and consistently enforced. It may also be advisable to consult with legal counsel to ensure compliance with local laws. By taking these simple steps, employers can better protect themselves without sacrificing their competitive edge.

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