

Social Media Challenges in the Workplace

Social media (i.e. blogs, social networking, and video sharing) is extremely popular among users of all ages and prevalent in almost every workplace. Employees' social media use—whether for business or personal purposes—raises a number of questions regarding employees' and employers' respective rights and responsibilities. Some legal concerns related to social media use and its intersection with the workplace include:

- **Revealing Trade Secret or Proprietary Information-** Employees may reveal, either inadvertently or intentionally, proprietary or confidential information on a blog or social networking site.
- **Discrimination-** Employers may face liability when its employees use social media to gather more information about job applicants and employees than they otherwise would have been able to learn through traditional means. An employer that accesses social media to gather information about its applicants or employees may unintentionally expose itself to failure-to-hire or wrongful termination claims, depending on how the information is used by the employer.
- **Bullying-** Employers may face liability when employees use social media to disseminate rumors, gossip, and offensive false statements about co-workers and supervisors. Employees may also become the victim of taunts or jokes from co-workers on social media or through e-mail or messaging.
- **Employer Liability for Employee's Illegal Behavior-** Employers cannot ignore internet based criminal activities when known. Employers must consider reporting the unlawful conduct to the authorities. To mitigate risks, employers should have and enforce policy prohibiting unlawful Internet activity.
- **Federal Trade Commission (FTC) Guidelines-** Companies may face liability when employees use social media to comment on their employer's services or products without disclosing the employment relationship; such liability may result even if the comments were not sponsored or authorized by the employer.
- **The National Labor Relations Act (NLRA)-** confers rights to employees to form, join or assist labor organizations, refrain from such activities, and participate in activity engaged in for "other mutual aid or protection." Employees' communication through social media may be protected under the NLRA.

Employers should review their social media policies to help avoid these legal and compliance pitfalls.

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Whenever you require HR advice or help navigating the ever-changing landscape of California and Federal Employment Laws and Regulations, call for a no obligation consultation.

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