



## Legal Alert

September 12, 2012

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### Social Media Policies for Employers

Whether you believe social media such as Facebook, Twitter, LinkedIn, or blogging is either a giant waste of time, or the greatest marketing tool ever invented, it is a force to deal with, at least for the time being. Social media, like any great power, can be used by your employees for good or evil. As a result, your company needs to establish a social media policy.

Why is such a policy necessary? Would you want an employee posting on Facebook how incredibly busy she is while you are laying off other employees? Do you want someone tweeting about a new product that has not yet been released or disclosing trade secrets? What about someone bemoaning your current financial situation and reaching out for new employment on their blog? What about prematurely touting the landing of a new client through a LinkedIn post? Things like that can go viral in a hurry and you might lose the trade secret or control of the message.

You could go online and find a huge number of sample social media policy templates. Some of these are a few paragraphs and some are more than ten pages long. While these samples might provide a good starting point, your social media policy must strike the right balance between allowed use and restrictions that fit your company culture and how you currently use, or intend to use, social media.

At a minimum, in preparing an effective social media policy, you need to consider the following:

1. If your company is using social media for marketing purposes, someone needs to be responsible for managing and participating in social media. If your company has a Facebook page, you need to control who posts there, what gets posted, and any comments.

2. Establish ground rules for employee participation in social media. What employees do on their own time is their thing. But, when they do anything that identifies them as your employee, or make references to work-related topics, reasonable controls are both necessary and appropriate. Employees need to be reminded that confidential, proprietary, and non-released company information cannot appear in social media. For publically held companies, nothing can appear in social media that could impact share prices. Disparaging comments about the company or competitors, untruthful statements, comments about illegal drug use, or offensive pictures or comments will all reflect badly on the employer and might result in liability.

3. Consider monitoring the social media space.
4. Control who can speak for the company to the media.
5. Prohibit the use of company equipment for personal social media sites.
6. Prevent use of the company logo or trademark on personal sites.

While employers need to have appropriate restrictions on social media use, those restrictions cannot be so broad that they infringe on the organizational rights of employees. The NLRB has issued a lengthy report warning employers that their social media policies cannot preclude employees from participating in concerted activities. As a result, it is permissible for employees to communicate with each other on matters such as wages and working conditions using social media just as if they were talking with each other over a beer after work.

This mandates that social media policies contain properly crafted disclaimers stating that nothing in the social media policy is intended to prohibit employees from exercising their rights under any law.

The legal principles that will be applied to social networking are still in their formative stages. As a result, no one can predict with certainty where all of the lines will end up being drawn. However, some matters are relatively clear. You do not have to tolerate employees sharing proprietary information, or trade secrets, on social media any more than you would tolerate an employee publishing such matters in the newspaper. You do not have to look the other way when an employee says disparaging things about their employer. Just make sure you have clear and legally permissible protections in place.

If you would like assistance in developing a social media policy for your company, contact Rick Mahrle at 602-256-4433, or [rmahrle@gbllaw.com](mailto:rmahrle@gbllaw.com).

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