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***“Friending” and
“Tweeting” in the
Workplace:
The Impact of Social
Media on Corporate
America***

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Potential Legal Exposure Due to Employee Use of Social Media

- Discriminatory/Derogatory Postings;
- Threats of Violence;
- Disclosure of the Company's Confidential Information/Trade Secrets;
- Defamation;
- Illegal Content;
- Participation in Lawful Conduct; and
- Invasion of Privacy.

How To Minimize Risk To Your Client

- Implement an electronic use policy:
 - Employees should be told they have no expectation of privacy regarding use of the Internet and social networking sites.
 - Incorporate and reference other employment policies, such as policy prohibiting unlawful harassment.
 - If consistent with company policy, prohibit use of social networking sites while at work or block sites in the workplace, unless required by an employee's job duties.

Craft your policy carefully...

The NLRB is watching --

- *American Medical Response of Connecticut's* policy prohibited disparagement of “the Company or the employee’s superiors, co-workers and/or competitors.”
- An employee made negative comments about her supervisor on Facebook and several co-workers commented, to which the employee again responded with negative comments. The employee was terminated.
- The NLRB investigated and found the postings constituted protected, concerted activity under the NLRA and the policy was overbroad and unlawful because it prohibited disparaging remarks via a personal Facebook page.
- The case settled and the employer was required to revise the overbroad policy.

- The NLRB filed a civil complaint against *Thompson Reuters* accusing the company of illegally reprimanding a reporter because of a public Twitter posting criticizing management.
- Facts are unclear, employee claims she was intimidated by the oral reprimand, but whether she was disciplined is unknown.
- Regardless, this is a hot button issue for the NLRB.

Can An Employer Monitor Social Media Content of Its Employees

- Invasion of Privacy Concerns
- *City of Ontario v. Quon*:
 - Can an employer read text messages sent on a workplace mobile device?
 - Lower court: Generally, individuals have a reasonable expectation of privacy in stored text messages.
 - Exceptions:
 - Consent of the writer or recipient
 - Computer use policy

Invasion of Privacy Concerns (cont'd)

- *Yaith v. Fairview Cedar Ridge Clinic*
 - MySpace posting was per se “publicity”
 - Communication via social networking sites is considered communication to the public
 - Number of actual viewers irrelevant

Potential Liability for Employee's Use of Mobile Devices

- Texting While Driving/Operating a Motor Vehicle
 - Unlawful in Several States and Municipalities
 - Ask:
 - Is the employee acting in the scope of employment?

Potential Liability for Employee's Use of Mobile Devices

- Overtime
 - Use of mobile devices may be considered time worked by non-exempt employees
 - “De minimis” time
 - Time spent on-call
 - New wave of class actions. *See Allen v. City of Chicago*. T Mobile, AT&T Mobility and CB Richard Ellis were also subject to similar suits.
 - Exempt Employees

How To Minimize Risk To Your Client

- Carefully consider which employees should be issued company-owned mobile devices.
- Consider drafting and implementing policies to address the use of mobile devices.
 - Employer monitoring of text messages
 - Operating a motor vehicle
 - Use after regular work hours



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***Can an employer be sued
for information posted
on social networking
sites?***

Employee Complaints

- **Look for:**
 - Complaints of discrimination or harassment;
 - Complaints of unpaid overtime or other wage and hour violations;
 - Any concerted activities that may be protected under the National Labor Relations Act; or
 - Complaints of unlawful activities that may be protected by whistleblower laws.
 - Be mindful of federal and state laws that prohibit retaliatory action.

How To Minimize Risk For Your Client

- Make sure Company policies clearly state correct procedures to file complaint.
- Advise that personal Internet postings unrelated to the employee's job duties should clearly state that the opinions expressed in the posting are the individual's personal opinion and not the Company's opinion.

Use of Social Media in the Hiring Process – Be Careful What You Ask For

- **Anti-Discrimination**
 - Pictures that reveal protected classification; and
 - Searches that uncover membership in organizations based on protected classification.
- **Fair Credit Reporting Act**
 - Applies to background checks conducted by a third party (not the employer).
- **Participation in Lawful Conduct**
 - Check state laws.

How To Minimize Risk To Your Client

- If you use social media to review an applicant's background, do so for all applicants.
- Hiring policies must be applied consistently with regard to all applicants.
- Verify information obtained through Internet searches.
- Document the reasons for any employment decision.



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