

10 DOs and DON'Ts for Employer Social Media Policies

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In recent years, the **National Labor Relations Board** has actively applied the National Labor Relations Act to social media policies. The Act exists to protect employees' right to act together to address their terms and conditions of employment. What many employers fail to realize is that the Act applies to union and non-unionized employers. With the Board's increased scrutiny of social media policies, including review of non-unionized employers' policies, the following list of dos and don'ts is meant to assist employers in drafting or reviewing their social media policies.

1. **DON'T have a policy prohibiting an employee from releasing confidential information.** The Board has found that such an overbroad provision would be construed by employees as prohibiting them from discussing information that could relate to their terms and conditions of employment, such as wages.
2. **DO have a policy that advises employees to maintain the confidentiality of the employer's trade secrets and private or confidential information.** The Board advises employers to define and provide examples of trade secrets or confidential information. However, the Board cautions employers to consider whether their definition of trade secrets or confidential information would include information related to employees' terms and conditions of employment.
3. **DON'T have a policy prohibiting employees from commenting on any legal matters, including pending litigation.** The Board found that such a policy would unlawfully prohibit discussion about potential legal claims against an employer.
4. **DO have a policy prohibiting employees from posting attorney-client privileged information.** The Board recognizes an employer's interest in protecting privileged information.
5. **DON'T have a policy prohibiting employees from making disparaging remarks about the employer.** The Board held that such a policy would have a chilling effect on employees in the exercise of their rights to discuss their terms and conditions of employment.

6. **DO have policy that prohibits employees from making defamatory statements on social media about the employer, customers, and vendors, and generally remind employees to be honest and accurate.**

7. DON'T have a policy advising employees to check with the company to see if the post is acceptable, if the employee has any doubt about whether it is prohibited. The Board held that any rule that requires permission from the employer as a precondition is an unlawful restriction of the employee's rights under the Act.

8. DO have a policy that prohibits employees from representing any opinion or statement as the policy or view of the employer without prior authorization. Advise employees to include a disclaimer such as "The postings on this site are my own and do not necessarily reflect the views of the [Employer]."

9. **DON'T have a policy prohibiting negative conversations about co-workers or supervisors.** The Board held that without further clarification or examples, such a policy would have a chilling effect on employees.

10. **DO advise employees to avoid posts that reasonably could be viewed as malicious, obscene, threatening or intimidating, or might constitute harassment or bullying.** Provide examples of such conduct such as offensive posts intentionally mean to harm someone's reputation or posts that could contribute to a hostile work environment on the basis of a race, sex, disability, religion or any other status protected by applicable state or federal law.

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