

## Top Five Social Media Tips for Employers

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With new social media apps and platforms arriving seemingly daily, and employees spending increasing amounts of time on social media, employers are well advised to consider the potential ramifications for the workplace. Here are 5 key tips for employers to consider in this constantly changing environment:

1. Implement an effective and enforceable employee social media policy in writing. Absent a carefully crafted social media policy, an employer may find its options significantly limited for dealing with employees who engage in inappropriate behavior on social media. For employers who already have a social media policy, ensuring that it is enforceable, particularly under the National Labor Relations Act (“NLRA”), is critical. The National Labor Relations Board (“NLRB”), for example, has found social media policies to violate the NLRA on several grounds, including where the policy (1) prohibited disclosure of confidential or non-public information that was broadly defined, without clarification, and reasonably could be construed by employees to include employee information; (2) overbroadly regulated employee conduct toward the employer rather than being limited to regulating employee conduct towards coworkers, clients or competitors; and (3) overbroadly banned the use of company logos, copyrights, and trademarks rather than merely requiring employees to respect copyright and trademark laws.
2. Train employees regarding the company’s employee social media policy and social media use in the workplace. Employees familiar with the company’s social media policy, and the types of conduct it prohibits, will be less likely to violate it.
3. Develop and implement protocols and guidelines for use or non-use of social media during employee recruitment and hiring process. As the EEOC has warned, perusing job applicants’ profiles and information available on social media, which could reveal an applicants’ religion or disability for example, can expose employers to discrimination claims. Employers choosing to allow some review of applicants’ social media profiles as part of the hiring process should consider implementing protocols establishing who may engage in such review, the scope of such review, and at what stage of the hiring process such review can occur.
4. Establish clear policies regarding ownership of content on corporate social media accounts. Employers should make clear in writing that they own their corporate social media accounts and the content on those accounts, not the individual employee(s) who may manage those accounts on a daily basis. To the extent employers consider the content on corporate social media accounts, such as client lists and contact information for example, to be proprietary or confidential, they should make that clear in the applicable corporate policies.

In addition, employers should consider establishing back-up procedures for administrative access to corporate social media accounts in the event the employee primarily responsible for managing the accounts departs unexpectedly.

5. Don't ask employees or job applicants for access to or content from their personal social media accounts, except in limited circumstances. Many states, including California, now have passed legislation generally prohibiting employers from requiring employees and job applicants to provide access to or content from their personal social media accounts except in certain limited circumstances. Employers, however, should be aware of the exceptions. In California, for example, similar to other states that have passed such laws, employers are permitted to ask an employee to divulge personal social media content that the employer reasonably believes to be relevant to an investigation of allegations of employee misconduct or employee violation of applicable laws and regulations.

Even though this is a rapidly evolving area of the law, employers can stay ahead of the game by implementing the tips discussed above.

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