

Pennsylvania's Strict Construction of Social Media Policies

Article By:

Labor and Employment Law Practice Group

Personnel policies are designed to inform employees of the types of conduct that are acceptable or unacceptable. They, obviously, can only give a general overview and are subject to interpretation and application by the employer on a case-by-case basis. A recent decision arising out of a Tweet by a Vice President of Human Resources shows that such policies will be strictly construed against employers in Pennsylvania.

The employer had the standard social media policy which, to protect its reputation, said that it expected employees who identified themselves with the employer in social media to promote and protect its interest. Its Vice President of Human Resources posted a Tweet on her Twitter page discussing recent political events. The Tweet, however, did not identify her with the employer. Rather it merely identified her job title and her general geographic area. It also showed that she followed the employer's Twitter account. Through additional research efforts, a Google search of her name or the employer's directory would show that she worked for the employer. The employer, therefore, terminated the Vice President for violation of its social media policy.

In reviewing this factual scenario, the Pennsylvania Supreme Court literally interpreted the social media policy. The Tweet did not identify her with the employer, merely her job title and general location. Following the employer's account, moreover, was held not to be linking her account to the employer's. Her personal Tweet, therefore, was found not to be a representation of the employer. The Court conceded that through additional electronic research one could determine the identity of the Vice President's employer. This was not prohibited by the social media policy, as her personal Twitter page neither identified her with the employer nor did it purport to represent the employer. Thus, the Court held that there was no violation of the social media policy.

This decision evidences that, while the thrust of a social media policy may be obvious, Courts in Pennsylvania will strictly, and literally, construe them against their authors – employers. These policies, therefore, must be detailed and readily updated with the evolution of technology.

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