YOUR COMPANY

SOCIAL MEDIA POLICY

(Employer Policy Manual and Employee Handbook)

YOUR COMPANY believes in open communication and recognizes the right of employees to participate in online forums and social media, including posting about their work. However, use of social media presents certain risks and responsibilities and even on a “private” or password-protected forum, nothing online is completely private. To assist you in making responsible decisions about your use of social media, we have established these guidelines for appropriate use of online communication forums, including websites, blogs, wikis, social networking and social media forums for both professional and personal use.

It is essential that employees understand the difference between speaking “on behalf of” YOUR COMPANY and speaking “about” YOUR COMPANY. Employees may not imply or claim to be speaking on behalf of the company on any online forum unless expressly permitted to do so in writing.

For all online forums, employees are asked to:

- Be transparent by clearly identifying themselves as an employee of YOUR COMPANY if the post is in any way related to the company or the job.

- Make it clear to readers that the views expressed are the employee’s alone and do not necessarily reflect the views of YOUR COMPANY.

Examples of appropriate disclaimers include:

The views expressed in this post are mine alone and do not necessary reflect the views of my employer.

OR

These words are mine, not YOUR COMPANY ‘s.

- Refrain from disclosing confidential financial data, trade secrets, non-public proprietary company information and confidential information regarding business partners, vendors or customers. The company recognizes that employees have the right to discuss working conditions and nothing in this policy is intended to infringe on that right or any other right available to employees pursuant to the National Labor Relations Act.
• Be honest and respectful of everyone, but especially of our employees, customers, partners, affiliates and competitors.

• Refrain from using social media while on work time or on equipment we provide, unless it is work-related and authorized by a supervisor.

If you have any questions about these guidelines or any matter related to your site that these guidelines do not address, please direct them to your supervisor or HR.
Although social media barely tops a decade old, cautionary tales abound. Two cases that demonstrated how easily social media can generate big controversies are:

- At a March 2013 Python programming language conference (PyCon in Santa Clara, CA), two developers in the audience at a plenary session allegedly made crude jokes about programming terms of art “forking” and “dongles” that speakers were using on the stage. A third developer sitting in front of them was offended. She took a picture of them and uploaded the picture to Twitter, asking conference organizers to speak to the developers. In the ensuing controversy, all three were fired by their respective employers, and the company of the developer who tweeted the complaint later suffered a Denial of Service attack, allegedly as payback for the other two developers’ being fired.

- A public relations executive in London tweeted an off-color joke about AIDS in South Africa, and she made the tweet just before she took a trip to South Africa. Despite only have a few followers, her tweet went viral and by the time her plane landed, her company had already decided to terminate her.

Recent cases:

- A National Labor Relations Boards judge ruled that a Havertown, PA-based Chipotle restaurant had violated labor laws in its social media policy. An employee had tweeted about the working conditions, including wages, working on snow days, and the timing of rest breaks. The supervisor asked the worker to remove the tweets. The employee did, but filed a complaint with the NLRB. The administrative law judge said the speech could be seen as “concerted activity” because the employee was speaking to other employees. Concerted activity is not venting to the world about an employer. But workers are allowed to communicate about working conditions with each other and other interested parties. (Chipotle v. Pennsylvania Workers Organizing Committee, No. 04-CA-147314, NLRB 2016).

- A English professor of Native American descent was appointed chair of Northeastern State University, Tahlequah, OK, sued his employer after a colleague posted on a Facebook that “They’re making a [expletive] Indian chair.” A district court allowed the case to go forward, saying a jury could see the post as indicative of a hostile workplace. The case was reversed on appeal on a technicality. Nonetheless, the case illustrates that obviously
offensive social media posts by co-workers can lead to lawsuits, which take time and money to handle even if the employer eventually wins. *(Hannah v. Northeastern State University, No. CIV-14-074, 10th Cir., 2016)*

**HR Implications:** Social media law is a rapidly growing area of law. To avoid becoming a test case, keep your social media policies focused on general principles: social media activity should not interfere with work, confidentiality and securities-laws must be followed; be respectful; bring questions to a manager; and make sure employees speak only on their own behalf. However, some speech is protected, so managers need to consider the legal implications during disciplinary procedures. Make sure managers bring questions to HR if they have doubts.

The federal government continues to up the legal ante over what it considers employers’ restrictive social media policies that violate workers’ rights.

The National Labor Relations Board, which has issued a number of rulings against such policies since 2012, underlined its stance in a new case involving a sports bar in Watertown, CT.

The bar fired two employees for taking part in a Facebook discussion in which they attacked their employer for failing to withhold the right amount of state income tax from their paychecks. The employer cited its policy against “inappropriate discussions about the company, management, and/or co-workers” as justification for the terminations.

But when the employees took their case to the NLRB, the board ruled that the company had violated the section of the National Labor Relations Act that protects employees’ rights to engage in concerted activity, including discussion of the terms and conditions of their employment. This protection extends to non-union as well as unionized employees.

The employer claimed that the conduct of the employees it fired was extremely disloyal, so much so that they forfeited their claim to the NLRA’s protection. It noted that they had used profane language to assail one of the bar’s owners, and had said things that were maliciously untrue.

The board disagreed. The purpose of the employees’ Facebook discussion had been “to seek and provide mutual support looking toward group action to encourage the employer to address problems in terms and conditions of employment, not to disparage its product or services or undermine its reputation.”

The board also said that the company’s policy discouraging “inappropriate” discussion about it or its management was illegal under the NRLA, not because it
explicitly restricted protected activity but because it could be understood by employees as barring discussions about their terms and conditions of employment.

The board has previously ruled that employers could bulletproof their social media policies by including disclaimers of intent to not interfere with employees’ legal rights. But in this case, the boilerplate language the company had inserted into its policy – stating that it had “no force or effect” if precluded by state or federal law – wasn’t specific or strong enough to save the policy from illegality, the board said.

In light of all this legal complexity, then, what can you do to make sure your social media policy passes muster? (Triple Play Sports Bar & Grille, Nos. 34-CA-012915/34-CA-012926, NLRB 2014)

**HR Implications:** Social media policies should clearly delineate two categories of employee social media activities – the ones that are legally protected and the ones that aren’t. The policy should describe the activities protected by the NRLA, and say explicitly that the policy doesn’t intend to interfere with these rights.