Workplaces All A' "Twitter"

Legal Alert

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Kenneth Gilberg

The profound impact of social media on the workplace has made it both a boon and a bane for modern business. Twitter, Facebook and MySpace have changed the way employees communicate - both on and off the job Businesses that permit employees to access the internet can increase productivity and enhance performance. . However, allowing employee access to the internet also has created fertile ground for abuse and lawsuits. Social media now permeates every aspect of the employment cycle, from pre-employment screening to post-discharge situations. The challenge for employers is to effectively manage this technology without violating legally protected employee privacy rights.

The following illustrations highlight some of the problem areas that employers may face as a result of employee use of social media in the workplace setting.

Employers routinely utilize social media as a means to compile information in connection with employee hiring decisions. Applicants for employment may reveal information about themselves through messages and photos contained in social media. Although employers may use this information in their decision making process, they must exercise caution to ensure that its effect doesn't adversely effect an applicant by the use of unlawful discriminatory criteria.

- Use of social media may engender inappropriate familiarity between a supervisor and an employee. Such familiarity may create not only awkward situations but also the potential for employer liability. An employee, for fear of employer retaliation, may feel compelled to accept a supervisor's invitation to be a "Facebook Friend" or otherwise accept a supervisor's request to be allowed access to an employee's "private" social media site. A supervisor with such access may gain access to information about the employee's social activities and other personal information that could lead to claims of discrimination, sexual harassment or hostile work environment.
- Employees' improper utilization of social media at work and during work time raises concerns about lost productivity. Employees may also improperly use social media to defame or harass other employees or make disparaging remarks about their company and/or its products. . An even greater concern is that employees may misuse social media to misappropriate proprietary company information such as trade secrets or other confidential information.
- Potential legal issues may arise when members of management uses social media to comment about an employee who has left the company. Although many employers have adopted a policy to provide only a "neutral reference" (dates of employment and position held) for departed employees, this caution is frequently ignored when supervisors and managers respond to reference requests through social media sites.

- Court's have determined that employers may isolate an employee's legally protected employee privacy rights if the employer accesses an employee's "private" social media information. This may even be the case in situations when the information that has been accessed is contained on an employer-provided devices or an employer managed server.

It is apparent that with the benefits that accompany the use of social media in the workplace is a potential downside that may include employee lawsuits and a myriad of other legal issues. Since the use of social media is pervasive and not likely to disappear, it is prudent for employers to be cognizant of and prepare for these risks. Some suggestions for employers to avoid these risks include:

- Craft broad language encompassing social networking sites, blogs and virtual worlds into current information technology codes of conduct, harassment and confidentiality polices
- Inform employees that misuse of social media can be grounds for discipline, up to and including termination
- Monitor employee use of the company's computer and communication systems and discipline employees for misuse
- Prohibit employees from placing false information about the company, its employees or its customers on the internet or elsewhere
- Prohibit employees from utilizing company logos or trademarks on their blogs and personal web pages and profiles, and prohibit and require employees to state that opinions expressed are their own and not those of their company or employer
- Comply with all federal, state and local privacy rules and regulations
- Notify employees who resign or who are terminated that access to and use of the company's computer system and its information is prohibited
- Immediately confiscate company-issued laptops, smart phones, etc. from departing employees and consider the inspection of such devices to evaluate whether certain company information has been misappropriated
- Require all employees to acknowledge, in writing, that they should not have any expectation of privacy for any information that is sent, received or stored on the employer's computer and communication systems and that the employer reserves the right to intercept and monitor employee communications on its systems

Conclusion

In today's fast- paced technological world, employers should protect themselves from employee abuse of social media in the workplace by establishing policies and procedures concerning its use. Employers who establish, update and revise social media policies and learn how to positively use social media in the workplace will be able to take advantage of its instant and far reaching capabilities - without unnecessarily opening themselves to employee abuse and lawsuits.