

Employment and Labor Alert: The Increased Use of Social Networking Websites and the Importance of a Social Networking Policy for Your Workforce

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A recent survey by the Society of Corporate Compliance and Ethics (SCCE) and the Health Care Compliance Association (HCCA) shows that **half** of all employers lack a policy to address employees' use of social networking websites outside of work, despite the fact that **one-fourth** have disciplined an employee for improper activities on Facebook, Twitter, and similar sites.

The survey results, released on September 25, 2009, provide statistical support for what we have been experiencing in our day-to-day counseling roles: a significant increase in employers' questions and concerns regarding employee use of social networking sites.

Prior to the Internet age, an employee's social conduct outside of work rarely impacted his/her employer, as such conduct generally took place among a limited group of peers and friends, and rarely was witnessed by a large general audience. An employee's conduct on social networking sites, on the other hand, is broadcast to a potentially worldwide audience and can create many legal problems for employers. For instance:

- Employees may disclose the employer's confidential and proprietary information to the general public.
- Employees may make statements on the sites that are in writing, that are attributed to the employer, and that violate the law (*e.g.*, defamation, unlawful harassment, unlawful hate speech, etc.).
- Employees may make statements or post pictures that embarrass the employer and/or harm the employer's reputation in the industry and/or with the general public.
- Employers may treat similar instances of employee online conduct inconsistently, exposing the employer to claims of unfair treatment and discrimination.

In light of these risks, employers should consider implementing a policy regarding appropriate employee conduct on social networking sites. Such a policy may address the following topics:

- Disclaimers for communications, indicating that views expressed by the employee are the employee's alone and do not represent the views of any other entity or person
- Compliance with company confidentiality policies, as well as contractual, common law, and statutory obligations regarding the protection of trade secrets and confidential and proprietary information

- Compliance with relevant company human resources policies (e.g., policies regarding alcohol and drugs, sexual harassment, discrimination, inappropriate conduct, and electronic communications)
- Compliance with federal, state, and local laws
- Lawful, appropriate, and respectful references to the company, its clients, partners, customers **and** competitors
- Appropriate use of social networking sites during work hours and on (or via) company property
- Accurate descriptions of potential disciplinary actions for policy violations.

In addition to considering a social networking policy, employers should consider policies governing conduct that relates to social networking, such as:

- Acceptable use of the company's computers, Internet access, e-mail system, and voicemail system
- Required protection and non-disclosure of the company's confidential and proprietary information
- Appropriate use of the company's computers and Internet capability for personal reasons during work hours.

In light of the clear and significant increase in both the number of employees using social networking sites and the amount of time spent by employees on such sites, employers must consider whether a policy on such conduct is appropriate. The content, application, and tone of a social networking or related policy, of course, will differ depending on the employer and its preferred approach to human resources/employee relations issues. Additionally, as with any policy, an employer should only adopt a social networking or related policy if it is prepared to police and enforce the policy, and do so consistently among all employees.

Our labor and employment attorneys can assist you in determining whether a social networking policy is appropriate for your company.

For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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