

# EMPLOYMENT LAW ALERT

October 2010

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- Sexual Harassment Prevention
- Discrimination Avoidance
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- Employment At Will, Breach of Contract and Termination for Cause
- Employee Policy Manuals
- Family and Medical Leave
- Wage and Hour Requirements
- Employee vs. Independent Contractor
- Executive Employment Agreements and Severance Packages
- Comprehensive Litigation Services

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## ***Previous Alerts***

**[September 2010](#)**

**[June 2010](#)**

**[May 2010](#)**

## **Social Media Continued. . .**

By: Kimberly B. Malerba



We continue to bring you updates concerning social media because of the increasing legal significance and potential for liability that this technology presents. One such significant impact includes the ability of both employers and employees to gain access to unprecedented amounts of information through web sites such as Facebook<sup>®</sup> and Twitter<sup>®</sup>. In fact, the use of social media in litigation, including employment litigation, has reached such a noteworthy level that the New York State and New York City Bar Associations recently issued guidelines in connection with attorneys' use of social networks to search for incriminating evidence against an opposing party.

The guidelines, which are not binding but are considered persuasive, permit attorneys to search accessible pages on any of these Internet-based sites, but do not permit an attorney to clandestinely "friend" a witness in an effort to gain access to information.

The importance of this information to employers, even those not currently engaged in litigation, is to recognize that information that managers, employees or others post on social networking sites may someday end up being utilized as part of a litigation. Therefore, while New York law does limit an employer's ability to control employees' legal recreational activities outside of work hours (such as social networking), it is still essential for employers to maintain and enforce a company policy that thoroughly details company information that may - and may not - be disclosed on the Web. While such a policy may not preclude social media from being an issue in litigation, it may support an employer's position that it took proactive steps to prohibit behavior in violation of the employer's workplace policies. In addition, such a policy can also help the company demonstrate that it attempted to protect confidential information, should that information end up on someone's Facebook page.

**[Domestic Workers Bill of Rights Signed into Law](#)**

[April 2010](#)  
[March 2010](#)  
[February 2010](#)

In our [June 2010 Employment Alert](#), we described a bill that had been passed by the New York State Legislature that paved the way for significant changes in the labor law for domestic workers. This bill was recently signed into law, affording certain household employees rights that the average corporate employee - who is typically an "at will" employee - may not have.

The new law, which takes effect November 29, 2010, provides domestic workers with, among other things, overtime pay, a day of rest every seven days or overtime pay if the rest day is waived, three paid vacation days after one year of work, and protection under various laws, including against harassment and discrimination. The law also imposes additional obligations under the Workers' Compensation law. Accordingly, those employing domestic employees would be prudent to review their current practices and insurance policies prior to the effective date of the new law to ensure compliance with the new obligations now imposed upon such employers.

If we can be of assistance on these or any employment law issues, please do not hesitate to contact us.



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