The Do's and Don'ts of Social Media in the Workplace

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Agenda

• DO Know the Legal Landscape
• DON'T Use Social Media in Employment Decisions
• DO Allow Employees to Say Protected Things
• DON'T Permit Harassment
• DO Include Allowed Restrictions in Your Policy
• Q & A

DO Know the Legal Landscape
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Back in the Days of the Wild West...

National Labor Relations Act: Protected Activity
- Right to bargain collectively or form a union
- Right to discuss Terms & Conditions of employment

Pay
Working conditions
Hours

National Labor Relations Board
- Has struck down provisions of employers' social media policies
- Cites NLRA Section 7 violations in challenges
- Employee-friendly decisions have been common
- Uses very broad definition of "concerted activity"
DON'T Use Social Media in Employment Decisions

Social Media and Applicants

* An applicant’s social media account may tell you information you cannot use when hiring
* Hiring decisions may be more difficult to defend if you have seen protected information, even if you did not rely on it
* Reference checks are recommended, but stay off of the internet!
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Social Media and Employees

- "Friending" employees can expose you to liability and lead to accusations of favoritism as well as negatively affect employee morale.
- Treating employees differently can easily be construed as having discriminatory intent.

DO Allow Employees to Say Protected Things

Famous Social Media Terminations

- Unfashionable pizza uniforms
- Bitter barista
- Programmer calls out sexist jokesters

Were these terminations justified?
What to Look For

Any mention of working conditions:
- Wages
- Breaks
- Pay Stubs
- Benefits
- Unions

“Like” Button Protection?
- Protected activity is not always verbal or written
- Employees are engaged in protected activity by hitting “like”
- NLRB ruling highlights the need to be mindful of protected activity in discipline

Retaliation
- Zero-tolerance for retaliation
- Retaliation claims are often added to other claims in lawsuits
- Consider how the reasoning for the employment decision would look to a stranger
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DON'T Permit Harassment

Harassment

- Do employers have a legal obligation to address harassment that occurs on social media?
- Can activity on social media put an employer on notice of illegal harassment?

Profane Language Protection?

- If employees become verbally abusive while engaging in protected activity, they may still be protected
- Be sure to distinguish specific policy violations when disciplining
DO Include Allowed Restrictions in Your Policy

Use at Work

- Use of personal accounts on work time
- Use of company email addresses
- Use of company social media accounts

Recommendations to Employees

- Always be fair and courteous to both customers and coworkers
- If a mistake is made, employees should correct it quickly
- Never post rumors or conjecture known to be false
- Include a disclaimer for personal opinions
Allowable Prohibitions

• Unprotected language (harassment, discriminatory remarks, and threats)
• Confidential information (trade secrets, business-related confidential communications)
• Unauthorized company representation