

### Does Your Company Have a Social Media Policy in Place?

Social media's popularity and widespread use has blurred the lines between personal and professional life. It has caused a debate over the impact, if any, an employee's social media activity should have on his or her employment. Whether it is an assistant uploading his paycheck on Instagram, receiving an endorsement from a LinkedIn connection, utilizing Facebook to complain about policies or co-workers at the office, or an employee using an alias to criticize your company on Twitter – social media has and will continue to impact the workplace.

Yet, despite the sheer number of people that utilize social networking in their day-to-day lives, employers, by and large, have failed to implement social networking policies or offer social media training. A 2012 report by SilkRoad Technology revealed that fewer than one in four employees has received a social networking policy from their employers and one in 10 employees has received social media training.

As the popularity of social media grows, so does the body of case law that governs social media in the workplace. Employers need to evaluate their ongoing business concerns compared to rights enjoyed by their employees. Each industry faces unique challenges: companies want to keep pricing information from competitors to maintain a business edge; trade secrets belonging to the business must be protected from public disclosure; and medical practices have to maintain patient confidentiality.

Given the high number of users and the potential impact of social media on the workplace, it is increasingly apparent that social media policies are becoming a necessity for each workplace. By crafting a comprehensive social media policy, employers can begin to address the challenges presented by increased employee use of social media and help to protect themselves and employees from social networking pitfalls.

Employers should take the following steps and precautions when crafting social networking policies:

- Be mindful of the current state of the law. The National Labor Relations Board's official position is that the protection of employees to address conditions at work extends to work-related

conversations conducted on social media. Your policy should indicate that protected speech is not a violation of any social media policy.

- Recognize that social media can become a breeding ground for harassment, discrimination and bullying between employees. Your social media policy should make it clear that this type of behavior is inappropriate and shall not be tolerated.
- Monitor what gets posted about their company and competitors. Posts by employees about competitors may open up an employer to liability for a myriad of claims, including defamation, trade libel and deceptive trade practices claims. Similarly, posts about the employer that misrepresent the employer's capabilities in a particular area may also create employer liability. Make sure any policy addresses the company's potential for liability when false statements or half-truths are disseminated on the internet.
- Protect confidential and proprietary information. Your social networking policy should explain to your employees what type of information is a "trade secret" (being mindful that not every employee needs to know exactly what the company's trade secrets are) and prohibit the dissemination of the same.
- Once the policy is established, employers should work with their employees to successfully implement the policy and to explain the policy's purpose and the consequences associated with violating it. Employers should make sure each of their employees read and sign an acknowledgment of this policy.

Finally, employers need to recognize that social media is fluid. Your social media policy should be monitored and updated regularly to keep up with ever-changing social networking media.

For more information, please visit Swanson, Martin & Bell, LLP's Employment Litigation and Counseling Practice Group page at [www.smbtrials.com](http://www.smbtrials.com).