



DRAFTING A SOCIAL MEDIA POLICY

When you start thinking about your social media policy, don't think of it as a punitive document that outlines a framework for disciplining various infractions. Instead, think of it as a set of guidelines to help employees understand the issues and risks, and stay out of trouble—thereby keeping the company out of trouble. Consider including the following components in your policy:

Employee bill of rights. This is a good way to start, so that employees feel that their personal rights are valued by the company.

- Emphasize that all employees have the right to use social media for self-expression on their own time.
- Include a right to digital privacy—that the company will not bypass the security or privacy settings of a social site to see employee content that is not publicly available.
- Explain what online harassment and bullying is, and that it is not considered acceptable by the company.

Internal usage guidelines. This clearly defines use rights during work hours.

- Specify whether social media is allowed during work hours and whether employees can access it using company equipment. A compromise could be reached to allow employees to use social media during lunch and break times.
- If personal use is not allowed during work hours, specify what constitutes acceptable use for business purposes only.
- Include security rules and protocols for downloading files, videos, third-party software, etc.

External usage guidelines. This can be a complicated issue, as is any issue regarding employee conduct outside of work hours. The law is still developing, but there have already been several high-profile lawsuits about whether a company can punish an employee for what is posted online. Because this area is especially problematic, be sure to have legal counsel review any language you select to implement an external usage policy for social media. Below are a few guidelines to consider:

- The line can easily blur for employees that use social media accounts for personal use and their company roles. Tell employees to use their best judgment and exercise personal responsibility as an ambassador of your organization, as there is a chance a colleague, manager or client may see information they post online. Offer specific examples of what should be considered inappropriate so that employees are unable to misinterpret this rule as restricting their rights under the NLRA.

ENDORSED AGENT FOR



- Include a clause that forbids employees from impersonating your organization, making statements on behalf of your organization without authorization or making statements that can be construed as establishing your organization’s official position or policy on any particular issue.

Social media confidentiality and nondisclosure guidelines.

- Revealing any trade secret, confidential or client information online should be prohibited, even in a “private” forum or message, as the security of the site could be compromised.
- Emphasize that your company policies related to confidentiality and nondisclosure apply to social media as well.

Official communication guidelines.

- Have a policy in place regarding ownership of accounts and followers for all employees using social media for business purposes. Lawsuits have arisen from this issue, as employees leaving companies have tried to take their account and followers with them, causing the companies to sue. Develop a policy now so it is easier to enforce later.
- Discuss what is expected of employees when they represent the company on social networks—and be specific. Include policies, procedures, do’s and don’ts, so that employees know their expectations and responsibilities in their social media role.
- Point out to employees that they can lose NLRA protection for their social media postings if their comments are opprobrious or if they participate in disloyal, reckless or maliciously untrue communications about someone else.

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Savings clause. Conclude the policy with a statement of intent that outlines the policy’s purpose of protecting the company’s brand and protecting against the unwanted disclosure of confidential information. Emphasize that the intent of the policy is not to interfere with any rights bestowed on employees by the NLRA (particularly Section 7) and note that, in the case of contradiction between the policy and the NLRA, the NLRA has precedence. Specifically state that the subject of working conditions, their right to communicate with other employees or the terms and conditions of their employment are by no means off limits, as this would violate the NLRA.

After your policy is developed, make sure it is distributed to all employees, and have employees sign a form verifying that they received and understand the policy. You may also consider requiring social media employee training to supplement this policy.

As with all employee policies, be sure to have legal counsel review your social media policy in full before finalizing and implementing it.



For more risk management tips for your public garden or other social media topics, contact Sharon Van Loon or Kim Slager.

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