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WINNING STRATEGIES FOR EMPLOYERS SINCE 1908.

# Social Media in the Workplace

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92% of employers plan to use social media as part of their recruiting strategy.

86% of recruiters are likely to review the social profiles of job candidates.

Companies have created internal social media websites to improve employee connectivity and creativity.

Companies encourage participation in external social media sites to build brand and product loyalty.

## Do You Use Pictures of Employees on Corporate Websites or in Promotional Material?

### Wisconsin's Privacy Law (Wis. Stat. § 995.50)

1. Someone intrudes on the privacy of another; the intrusion is highly offensive to a reasonable person; and the intrusion occurs in a place that a reasonable person would consider private.
2. The use, for advertising purposes or for purposes of trade, of the name, portrait, or picture of any living person without first obtaining the written consent of the person or, if the person is a minor, of his or her parent or guardian.
3. Publicizing a matter concerning the private life of another in a way which would be highly offensive to a reasonable person, when the publisher has acted unreasonably or recklessly with regard to whether there is a legitimate public interest in the matter disclosed, or with actual knowledge that no legitimate public interest exists.

Advise employees:

You may use their image for promotional purposes  
Including websites, brochures, and other similar material

Put this provision in your handbook.

Have new employees sign an acknowledgment of this notice.

# Employee Endorsements and Testimonials

FTC guidelines prohibit endorsements or testimonials from employees, and others connected to a company, if they fail to disclose those connections.

Require that employees disclose their status when endorsing the company, its products, its services, even its work environment.

# Genetic Information and Nondiscrimination Act

Genetic information:

- Medical histories;
- Family histories;
- Family and medical histories of relatives including aunts, uncles, nieces, nephews, great great grandparents and children of cousins.

# GINA

Employers cannot:

- Collect or acquire genetic information
- Use genetic information
- Discriminate against employees based on genetic information

The EEOC issued regulations in November of 2010.

They specifically address the acquisition of genetic information through social media.

# GINA

Inadvertent acquisition of genetic information does not violate GINA.

Includes acquisition from a social media platform to which you have been granted voluntary permission/access.

General internet searches which are likely to uncover genetic information are not inadvertent.



# Managing Your Online Image

- Does your company monitor what is said about it on the internet?
- What do you do if something negative appears?
- What would you do if the source of that comment is an employee?

## National Labor Relations Board

Over the last three years, the Board decided more than 35 unfair labor practice cases dealing with the discipline or discharge of an employee for posts on social networking sites.

**MOST OF THE EMPLOYERS  
DID NOT HAVE A UNION!**

# National Labor Relations Board

Protect social media as a forum for complaining about the workplace.

Protect social media as a forum for union organizing.

## Avoid Overbroad and Ambiguous Policies

Policy prohibited employees from “disparaging” employer in any media, including blogs and electronic media.

Upset about her transfer, an employee voiced her objection on Facebook using expletives.

Ten co-workers, including her supervisor, viewed her post.

Policy and discharge were unlawful.

## Overbroad Policies Can Be Unfair Labor Practice Even When An Employee's Discharge Is Not.

Supervisor reprimanded employee in front of her regional manager.

At lunch, the employee used her cell phone to update her Facebook status with the comment: “‘F\*\*k’ the employer.”

A co-worker “liked” this post.

Five days later, the employer issued a new social media policy:

Employees should avoid identifying themselves as employees on social networking sites unless there is a legitimate need to do so, or they are discussing the terms and conditions of employment in an “appropriate” manner.

Policy will not be interpreted or applied to “interfere with employee rights to self-organize, form, join, or assist labor organizations, bargain collectively, or engage in other concerted activities for the purpose of collective bargaining, or mutual aid or protection, or to refrain from engaging in such activities.”

Discharge was lawful.

Policy was not.

- Too vague
- Not clear to the average employee.

Policies cannot simply prohibit:

- “insubordination or other disrespectful conduct”
- “inappropriate conversations”
- “unprofessional communications that could negatively impact the employer’s reputation or interfere with the employer’s mission.”



Policies cannot:

- Require social networking communications to be “honest, professional, and appropriate.”
- Prohibit “defamatory or inflammatory” comments about the employer, its subsidiaries, shareholders, officers, employees, customers and business partners.
- Prohibit “unprofessional or inappropriate” comments regarding co-workers

## But It's My Equipment!

Employers cannot prohibit employees from disclosing or communicating confidential, sensitive, or nonpublic information concerning the company to anyone outside the company without the approval of senior management or the law department, **even when the policy is limited to communications made on or through company property.**

## I'm Only Trying To Follow The Law

The employer could not request temporary or permanent suspension of posted comments because the employer believed suspension was necessary to comply with securities laws “or otherwise in the best interests of the company.”

## Guidelines for Valid Social Media Policies and Employee Discipline

1. Work-related conversations between employees are likely to be protected.
2. Complaints about co-workers generally are not protected.
3. Regardless of whether you have a social media policy, discharging employees for discussing the terms and conditions of their job online may be an unfair labor practice.
4. Avoid a blanket prohibition on the disclosure of confidential information at work, on social media, or with others.
5. Policies should not require the approval of management or legal department before posting any information about the employer.
6. Specify the types of comments you are regulating. Refer to other policies and give specific examples.

## Guidelines for Valid Social Media Policies and Employee Discipline

7. Avoid unnecessary barriers to employee communication.
8. Employees are not lawyers.
9. You can't prohibit employees from speaking on your behalf or as your representative.
10. Do not prohibit all contact with government agencies or the media.

## 11. Follow Wal-mart.

- Give examples of prohibited postings
- Link prohibited postings to other policies such as anti-discrimination and anti-harassment policies.
- Encourage use of internal complaint processes, but do not require it and do not punish employees for using social media first.
- Prohibit use of critical statements, photographs, video, or audio postings which reasonably could be viewed as malicious, obscene, threatening, intimidating, harassing or bullying.
- Limit prohibition on false statements to those which an employee knows to be false.
- Define the trade secrets in private or confidential information employees should not disclose.

- Recommend a disclaimer to verify employees are not speaking on behalf of you.
- Prohibit using company time or company equipment for social media posts only to the extent prohibited in equipment use policies.
- Prohibit use of corporate email addresses to register for personal social networks, blogs, etc.

Can ask employees to confine posts to matters related to the company **when necessary to comply with securities regulations or other laws.**

Can prohibit posts disclosing personal health information.

Can prohibit employees from discussing product launch and release dates and pending reorganizations.

Can prohibit employees from publishing promotional content (defined as content designed to endorse, promote, sell, advertise or otherwise support the employer and its products and services).

Advise employees how and when the company may use pictures of them and provide an opt-out option.



## Monitoring Employee Use of Social Networking Sites

Do not require employees to “friend” you or to provide password and login information.

# Monitoring Employee Use of Social Networking Sites

Have a written policy on monitoring.

1. Limit monitoring to employer devices and communication systems.
2. Monitor for excessive personal use of the systems and uses which have a significant adverse impact on the employer.
3. Do not monitor personal communications any further than necessary to verify they are personal.
4. Define uses which have a significant adverse impact on the employer.
5. Explain what the employer will monitor and how it will monitor.

- Conclusions
- Q & A
- Thank you!

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