




SOCIAL MEDIA:

Developing and Implementing an Effective Policy for Your Municipality

PRESENTED BY:

- Melissa J. Jackson
 - 517.371.8106
 - mjackson@fosterswift.com
- Samuel J. Frederick
 - 517.371.8103
 - sfrederick@fosterswift.com

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What is Social Media?

- Social Networking (Facebook, My Space, Linked In, Twitter)
- Videosharing (You Tube)
- Online Multiuser Virtual Worlds (Second Life, World of Warcraft)
- Blogs



Why have a Social Media Policy

- Prevent loss of productivity
- Allow effective monitoring
- Protect employer's reputation/image
- Protect confidential information/trade secrets
- Protect against claims of defamation, improper recruiting/discipline, termination, and invasion of privacy
- Prevent unlawful discrimination and cyber-bullying



Issues with Social Media

- Privacy
- Confidential information/trade secrets
- Defamation
- Reputation
- Apparent Authority
- Unlawful Discrimination
- State and federal law compliance



Policy Should Be:

- Clear and specific about what is prohibited
 - Access
 - Use
- Consistent with employer's policies and procedures
 - Privacy
 - Computer, Internet, Email
 - Prohibited Discrimination



Monitoring the Use of Social Media

- Give Notice to Employees
- Is monitoring for both on and off duty activities?
- What to monitor (although not a legal obligation to do so):
 - Confidential information
 - Stalking/cyber-bullying
 - Compliance with legal restrictions
 - Unlawful discrimination
 - Defamation
 - Image



LIMITATION OF APPARENT AUTHORITY AND PROTECTION OF EMPLOYER IDENTITY

- Under the policy, the employees MAY NOT:
 - Use the employer's name in the online identity (e.g., username)
 - Imply or claim to speak as a representative of the employer (i.e., blogs, comments)
 - Use in any way, the employer's intellectual property, logos, trademarks, or copyrights
 - Reveal identity of a co-worker in online communication/posting



EXPECTATION OF PRIVACY - Reducing

- The First Amendment does NOT offer protection to an employee from being monitored, disciplined, or terminated for violation of a social media policy that is reasonable.
- The 4th Amendment on search and seizure does not apply.



EXPECTATION OF PRIVACY - Reducing

- The policy should reduce all expectations of privacy on the employer's computer, email, blackberry, telephone/voicemail systems, as well as any data on the systems.
 - Employees must know certain information can be monitored and accessed by the employer.
 - The policy should make clear that employees may have no expectation of privacy.
 - The policy should reserve the right to remove content without notice to employee
 - The policy should remind employees about privacy settings



Relevant Acts and Laws

- Social Media Policy must comply with the following laws:
 - **Electronic Communications Privacy Act** (wiretap – consent and business exceptions)
 - **Stored Communications Act** (improper access of electronically stored information)
 - **Federal Trade Commission Guidelines** (false advertising and misleading sales pitches)
 - Digital Millennium Copyright Act (procedure for posting IP and taking it down)
 - Rights of employees for concerted activity



Defamation/Disparagement

- If employee is engaging in social networking and blogging at work or on the employer's equipment, the following is prohibited:
 - Writing about, posting pictures, or in any way referring to employees, vendors, suppliers, or competitors without permission.
 - Offering a professional reference to current or former co-workers, clients, vendors, or any individual or company without first contacting designated employer official.



Protecting Confidential Information and Trade Secrets

- Policy should prohibit employees from disclosing:
 - Clients, customers, or suppliers by name without prior consent
 - Employer's confidential information and trade secrets
- Policy should dovetail with any restrictive covenant language in employment agreements or handbook



Preventing Unlawful Harassment and Discrimination

- Policy should emphasize that employees may not:
 - Post material that is abusive, offensive, insulting, humiliating, obscene, profane or otherwise inappropriate regarding the employer, its employees, vendors, suppliers, competitors, etc.
 - Post material that **may be construed** as discrimination or harassment based on race, ethnicity, color, national origin, religion, sex, age, disability, height, weight, genetic information, marital status, or any other characteristic such as sexual orientation, protected by applicable law.



Social Media Recruiting and Hiring Considerations

○ Hiring Practices

- Screen candidates in uniform manner
- Get written consent from job applicants
- Have a legitimate, non-discriminatory reason for employment decision based on information found on social media
- Screen information disseminated to decision – makers to ensure that it does not implicate a protected characteristic.



Summary of Best Practices

- Social Media is a useful but dangerous employment reality
- Employers need a clear and reasonable policy
- Notice to employees with express or implied consent to monitoring and consequences
- Training of all employees
- Clear handling of enforcement, reporting and compliance issues
- Alignment of policy with all relevant policies and practices from recruitment to termination



Thank you!

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