



Social Media Use By Municipalities: Maximize Reward but Minimize Risk

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Foster Swift Municipal Law News

January 26, 2016

As social media use continues to skyrocket, many municipalities and their public officials understand the benefits of being able to deliver a message quickly and directly to residents on Twitter, Facebook and other platforms. From communicating time-sensitive news such as school closings, to enlisting help from residents in fighting crimes, social media is an increasingly important tool to get messages out to the public, and for the public to interact with municipal officials. Although social media holds much promise, it is also fraught with risk. Not only do public entities need to monitor content posted on official channels, but some public employees use their personal accounts in ways which might present legal issues for the public entity.

Cities and towns across the country have been grappling with how to harness the power of social media, while guarding against the problems it can pose. In 2012, the City of Baltimore implemented a new social media policy that strictly restricted what firefighters can post on Twitter, Facebook and personal blogs. News reports explained that the policy provides that personnel can be reprimanded for online posts that don't comply with conduct rules that require "good judgment" and "courtesy and respect to the public, and to fellow employees," and the policy also prohibits sharing information about fire scenes. The department asserted that the policy was put in place to protect firefighters from improperly posting sensitive information online. The firefighter's union and free-speech advocates, on the other hand, argued that it was overly broad, and many firefighters believed that the policy was implemented in response to online criticisms of the mayor, the fire chief and other city officials following station closures.

In 2014, two Texas police officers were fired after engaging in an online debate on Facebook concerning the shooting of a black teenager by a white officer in Ferguson, Missouri. According to reports, the firing caused an uproar and divided the community. And the list goes on, as public entities face problems stemming from the lack of a social media policy, or the implementation of a policy that is viewed as overly

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restrictive, ineffective, controversial - or all of the above.

Because social media isn't going away, municipalities need to protect themselves from the risks that social media poses, including the risk of litigation. Social media-related lawsuit prevention includes being aware of common situations where a misstep by the public entity may result in litigation. For example, public entities should consult their legal counsel in the following types of situations:

- The public entity wants to discipline an employee for using social media to post a workplace grievance.
- The public entity wants to discipline an employee because of social or political opinions posted by an employee on social media.
- A supervisor posts offensive discriminatory comments.
- A first responder posts photos of an accident victim on social media.
- The public entity wants to monitor employees' social media postings or use of workplace computer.

The first step in preventing a lawsuit is putting in place a good social media policy, and then enforcing the policy fairly and consistently. A good policy is not only effective from a practical application and enforcement standpoint, but must also comply with myriad laws that could be implicated.

A policy that is too restrictive may violate an employee's First Amendment right to free speech. One that is overly broad may chill a public employee's right to engage in "concerted activity" in violation of federal labor laws. For example, a policy that prohibits employees from using social media in work areas during working hours is likely lawful, while one that prohibits statements in posts that damage the employer would likely be too broad and unreasonably chill concerted communication, and thus be unlawful.

Municipalities need to be vigilant and thoughtful in crafting and enforcing social media policies in order to avoid getting sued. What seem like useful, fun and harmless tools for sharing news and information can lead to trouble for a municipality if not used and monitored carefully.

Prevention is the best policy of all to avoid lawsuits before they start, and mitigate damage once they do. By promoting good policies and practices, discouraging bad ones, and seeking the advice of experienced legal counsel as problems arise, municipalities can harness the power of social media while avoiding many of the risks it poses. If you have any questions about your municipality's social media policy, please contact Karl Butterer at kbutterer@fosterswift.com.