

Draw the line

How businesses can legally regulate social media in the workplace **Interviewed by Heather Tunstall**

For many employers, having to deal with employee use of social media is a relatively new phenomenon, and it can be difficult to know where to draw the line. Facebook, LinkedIn, Google+ and other social sites are invaluable resources when it comes to marketing and interacting with customers, but these and other social networking sites can lead to uncomfortable situations if utilized inappropriately by employees, such as when used as a platform for sharing trade secrets or conveying negative thoughts about the company.

How can you protect your company without getting into legal hot water?

Smart Business spoke with Curtis Smolar, a partner at Ropers Majeski Kohn & Bentley PC, to find out how to navigate the unfamiliar terrain of social media policy.

Why should business owners be concerned with social media use in the workplace?

For the first time, not only do companies have direct access to customers, but individual employees are also put in direct contact with their customers. The widespread use of smart phones, all of which are equipped with social networking capabilities, is literally placing the outside world in the palms of the employees' hands. In that regard, there are a number of different issues: marketing, privacy and company trade secrets.

How can a business owner protect the company?

Companies dealing directly with external customers should have policies regarding social media regulation. Companies in the banking, pharmaceutical and legal industries are highly regulated and should have policies detailing acceptable social media usage for employees, as well as regulations stating what can be said directly to the public. Policies should be industry-specific, yet broad enough to cover any current or future device or form of communication.

Internally, any e-mail policies should specifically discuss the use of cloud-based e-mail providers like Google and Hotmail, making mention of social media communications and informing



Curtis Smolar
Partner
Ropers Majeski Kohn & Bentley PC

employees that such communication may be monitored by the company. In regard to workplace device use, companies are going to have to look at what is private and what is corporate. This can be achieved by making certain websites password-protected and differentiating between sites that are hosted by secured servers and those that aren't, with protected sites signifying employee use that is personal and separate from the business.

What legal issues should employers be aware of when putting guidelines in place?

If you're planning to monitor your employees, do so with caution. Although workplace surveillance is legally acceptable to some extent, the more invasive the surveillance becomes, the more likely it is to be considered in discordance with privacy laws. Companies should have policy explicitly describing employees' diminished expectations of privacy. Policies should state that any personal communication on social networking sites conducted at work is not private, that computers and any other devices are to be used solely for company business, that communications are

monitored to ensure compliance, and that these policies apply not only to internal communications, but also to external cloud-based communications.

As a caveat, though, be warned that social media policies cannot uniformly discourage employees' rights to concerted activity. The National Labor Relations Board (NLRB) actively enforces employees' rights to discuss working conditions. People today use social media to organize, which can be associated with the right to unionize and the right to congregate, neither of which may be legally denied.

Restriction of offensive or rude conduct or discourteous behavior, disparaging remarks about the company or inappropriate discussions of the company's management is also prohibited. However, this is true outside the workplace. If you do want your employees to be using social media networking to communicate with customers and advertise your products, qualify the distinction by stating that you can't partake in personal social networking activity at the office during work hours.

What can a business owner do if an employee is abusing company guidelines?

Companies should have internal policies dictating the corporate response under these circumstances. Policies must be enforced uniformly. Otherwise, companies run the risk of claims of disparate treatment, inviting potential lawsuits. Abuse of company policy should be documented in detail, highlighting the incident and the official response. Make sure that you are following your company's guidelines to avoid the perception that you are firing employees arbitrarily. <<

CURTIS E. SMOLAR is a partner with Ropers Majeski Kohn & Bentley PC. Reach him at (415) 972-6308 or CSmolar@rmkb.com.

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