

Employer Monitoring of Off-duty Social Networking - Good Business or Invasion of Privacy?

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Social networking has dominated business marketing and advertising. Just look at the commercials at the 2010 Superbowl. Many of 2010 ads were designed to drive potential customers to their websites while other companies pulled advertising completely. Pepsi pulled all Superbowl advertising and instead launched the "Pepsi Refresh Program," a web based program that saved \$15 million from Pepsi's 2009 Superbowl advertising budget.

Such powerful (not to mention free) marketing, has broad range implications to employers worldwide. Negative posts, tweets, and flicks can have a drastic impact on a company's reputation. For example, in Charlotte, North Carolina, Bixx Wood Fired Pizza terminated a server after she made a derogatory posting on Facebook regarding her customer's short tip. Another example of online postings affecting an organization occurred when two Dominos pizza employees posted a video on YouTube while another other disgusting things, sneezing on sandwiches, sticking cheese up their nose. Not only were both employees terminated, the police investigated their actions.

The exponential expansion of social media makes regulating off-duty social networking an important issue for management. Accordingly, there is no doubt that employers should have policies regarding off-duty posting that relates to their business.

Employers' attempts to regulate employees off-duty conduct has become a hot issue. Employers want productive employees and low insurance costs. An employer's interest in off-duty conduct is driven home by a study at the University of California, Berkeley, where

researchers found that employees who consume 10 or more alcoholic drinks in a week are more likely to file workers' compensation claims. However, employees expect their off-duty activities to be of no concern to their job.

The broad question remains: Can an employer terminate an employee for a posting that is unrelated to business, but not in line with management's personal views? For example, many people post pictures on Facebook. What if those pictures show an employee drinking, smoking or acting unprofessionally? Can an employer decide that those pictures do not reflect their value system and therefore terminate?

In California, employment is presumed "at-will," meaning that an employer may terminate an employee at any time and for any reason, so long as it is not for a discriminatory or retaliatory reason. Accordingly, in California, an employer can terminate an employee for their non-protected off-duty conduct. This is particularly so if the off-duty conduct affects the workplace. That being said, management should have a policy in place which sets forth the organization's social media policies.

Other states have enacted laws that prohibit employers from terminating employees for legal off-duty conduct. New York and Colorado have two of the most onerous laws for employers and have enacted laws that prohibit employers from terminating employees based upon their legal off-duty conduct, like smoking. Thus far, these laws have not been tested when it comes to presumably legal off-duty social networking.

While Bixx Wood Fired Pizza received negative comments, postings and tweets in response to its decision to terminate a server for her Facebook posting, they addressed customer concerns but did not reinstate the employee. The company did not violate any laws.

Ultimately, at least in California, since an employer may terminate for any reason or no reason at all, social media users beware. Bad publicity may not be enough to save your job.