

SOCIAL LIABILITY

Facebook, blogs and other social media present cause for concern and need for policy.

While direct electronic communications from one party to another are discoverable just as if they were sent on paper, a more nebulous area of communication that companies are having to confront are more communications sent out via social media websites. In an effort to be competitive, many companies have their own social media sites, but the liability could extend far beyond that.

"It is clear that courts are beginning to confront this issue more and more," says attorney Cheylynn Hayman of Parr, Brown, Gee & Loveless before citing several cases that have dealt with defamatory postings on various Internet forums. She warns, "Keep in mind that a company may be liable even for posts an employee makes to his or her own account or blog, independent of the company ... A company can also be liable for comments posted by an employee even outside of the scope of his or her employment, if the employee has apparent authority to make such posts."

Hayman also notes that, given how easily employees can access social sites through iPhones, BlackBerrys and cell phones, "It is probably unrealistic to expect that employers can entirely prevent their employees from accessing social networking sites on the job, even if the employer goes so far as to block access to such sites through the company's Internet service ... Therefore, a company should consider implementing a reasonable social media policy outlining guidelines for their employees' use of social networking sites, blogs and other social media."

When setting up a social media policy, Hayman recommends, among other things, that you consider the following points:

SAME RULES APPLY Make it clear that the company's existing policies in areas such as harassment, confidentiality, privacy, proprietary information, etc., still apply when it comes to social media communications.

NO LOGOS OR PHOTOS Employees may not use



the company name, logo or trademarks without prior written consent. This policy should also extend to photos or videos containing images of co-workers or clients.

WHO ARE YOU? Let employees know they are not authorized to speak for the company and require them to identify themselves as someone who does not speak on the company's behalf.

OFFICE HOURS Require that employees only use social media during non-work hours or while on breaks.

DISCIPLINE AND SIGNATURES Make clear that violations of the policy can result in disciplinary action or termination, and require employees to sign a written acknowledgment that they have reviewed the policy and will follow it.

Beyond creating the policy, Hayman notes, "Rather than simply distributing a written policy that employees may or may not read — and more likely the latter — companies may want to consider providing training to their employees."

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