KEEP IT SIMPLE: AVOID A COMPLICATED SOCIAL MEDIA POLICY FOR YOUR EMPLOYEE HANDBOOK

Rayan F. Coutinho, J.D., Ph.D.
Wood & Lamping LLP
600 Vine Street, Suite 2500
Cincinnati, Ohio 45202
(513) 852-6030
rfcoutinho@woodlamping.com

Introduction

There are some advantages to the use of social media such as Facebook, Twitter, and MySpace by employees. However, such use has also created a significant number of legal problems for employers. In addition to a decrease in employee productivity, there is a potential for legal liability from several sources, including breach of privacy, defamation, harassment, discrimination, copyright infringement and disclosure of confidential or privileged information. This concern has led to the incorporation of complicated and detailed social media policies into employee handbooks. Such policies create detailed descriptions for each technology on what an employee can or cannot do or say. Is there an alternative approach? We have been recommending to our clients a different concept - an approach where employees are treated as adults and are guided by basic concepts which could govern use of all technology, i.e. phone, internet, SMS, blogs and social media. Keeping it simple provides the employer with flexibility in dealing with undesirable situations. Examples of these concepts provided in this article can be tailored to your community’s needs.

Concepts To Guide Employees

1. Remember everything on the internet lives indefinitely. You have the personal and legal responsibility for your statements and actions. When in doubt, ask the designated person in the office before doing or saying something.

2. Do not speak on behalf of the employer unless you are authorized to do so. If not, authorized, then you may only speak as an individual providing his or her personal opinion. If authorized to speak on behalf of the employer, you must keep records of all online activities.

3. Confidentiality of employer information that is not a public record is paramount.

4. You should assume that every communication could be treated as a public record and could be revealed to a third party. Truth of identity and information is therefore important. Get your facts straight. Let subject matter experts respond to negative posts about the Community.

5. Give credit for authorship where it is due. Do not use copyrighted material, trademarks, or other content of third-parties without the necessary permission from the rights-holder. In order to avoid the appearance of official approval, use of employer’s trademarks and logos in social media, without prior written permission, is prohibited.
6. Be respectful of each person’s legal right to express their opinions, whether those opinions are complimentary or contradictory to yours. It is ok to disagree but please be polite.

7. Respect other employees’ right to privacy. Don’t share information about another employee’s opinions, beliefs, thoughts and emotions. Examples of frowned upon activities including posting of pictures, audio and videos without the permission of those featured in them, public disclosure of private facts and the disclosure of information gained through unreasonable intrusion.

8. No social media during business hours unless it is within the scope of your work.

9. Do not conduct business communications, internal or external, using social media. For example, if an office colleague is your friend on Facebook, do not use the site’s email account to discuss work related matters. You must use your work email account.

10. No discussion about another employee’s, business partner’s or vendors’ performance should be conducted on social media.

11. Compliance with all applicable laws is necessary to avoid litigation and waste of taxpayer money. Never discuss anything to do with a pending legal matter or case without running it by the law director / solicitor.

12. Respect differences. Harassment, slurs, insults whether racial, sexual or religious are prohibited online just like they are prohibited in the workplace.

13. Any statement about a business or individual must be readily verifiable by means of a link to a reliable, neutral source with a reputation for fact checking and accuracy.

Conclusion

There is no law that requires an employer, private or public, to provide employees with technology related policies. However, such policies can serve as preventative medicine as well as good employment tools, and can serve to educate employees on your community’s policies on modern communication tools and the usage thereof in the workplace. Documented technology policies should be made part of your employee handbook. There are several benefits to creating, maintaining and updating your technology policies: (1) you can save time because they allow your administrative personnel to spend less time answering the same employee questions over and over again; (2) they help introduce new employees to the political subdivision and helps them get acquainted with the work culture in your community; (3) documented policies create a sense of fairness and equality and help avoid accusations of favoritism; (4) they may aid in the defense of employment claims brought by a disgruntled former employee; (5) they provide guidance to the management and administrative staff on dealing with employee problems related to technology.