THE TOPIC OF EMPLOYEES’ RIGHT TO PRIVACY AND EXPRESSION IN SOCIAL MEDIA HAS BEEN FRONT AND CENTER OF LATE. SOCIAL MEDIA EMPLOYMENT NEWS HAS INCLUDED BEITSA’S GETTING CALLED OUT FOR THE NON-WORK ACTIVITY OF AN EMPLOYEE, FACEBOOK’S STAND AGAINST EMPLOYERS’ ASKING FOR JOB CANDIDATES’ SOCIAL NETWORK PASSWORDS, AND THE LATEST IN A LONG LINE OF EMPLOYEE FIRINGS FOR THINGS THEY HAD POSTED TO SOCIAL NETWORKS.

WHILE SOCIAL MEDIA CONTINUES TO EVOIVE — AND MUCH WILL CHANGE IN THE YEARS TO COME — EVERY EMPLOYER AND EMPLOYEE SHOULD UNDERSTAND A FEW SIMPLE THINGS. BEING IGNORANT OF SOCIAL MEDIA RISKS, BEST PRACTICES, AND LAWS IS NO EXCUSE FOR EMPLOYERS’ MAKING CAREER-ENDING MISTAKES OR EMPLOYERS’ STUMBLING INTO COSTLY LEGAL AND BRAND REPUTATION ERRORS.

WHAT EMPLOYERS SHOULD KNOW ABOUT SOCIAL MEDIA:

1. TRAINING AND COMMUNICATION ABOUT CORPORATE SOCIAL MEDIA POLICIES ARE ESSENTIAL: Some companies have no social media policy, but most have come to recognize that existing communication policies are insufficient to protect employers and employees from the nuances and unique risks of social media. Other organizations have a policy but fail to educate employees on the risks and ramifications of their actions in social media; this is almost as dangerous as having no policy at all. Simply put, your employees — particularly younger ones who are social natives — are ill-equipped to understand the corporate, regulatory and legal risks associated with the use of social networking sites. They may discuss concerns, and proactive solutions, such as organized employee gatherings and groups to collect feedback. The best solution is nothing new: strong, active, open and engaged leadership that listens to employees.

2. GIVE EMPLOYEES EVERY OPPORTUNITY TO VENT IN PRIVATE AND APPROPRIATE CHANNELS: Nothing a company does will prevent some employees from turning to social media to voice complaints, because social media sharing is second nature to too many people. Nevertheless, that should not prevent companies from trying to prevent as many social media problems as possible. The answer is not to prevent social media access at work — employees all carry their social networks in their pockets or purses nowadays — but instead to furnish multiple ways for employees to share feedback within the company.

3. DO NOT ASK FOR CANDIDATES’ OR EMPLOYEES’ PASSWORDS: Asking for employees’ and candidates’ social media passwords is problematic for several reasons. First, doing so might expose you to information that the person is in a protected group, which could then open the company up to a discrimination claim. Also, your organization could suffer a blow to its reputation if a candidate or employee discloses the practice.

In hiring situations, you might lose a qualified candidate concerned that your organization demonstrates a hostile and distrustful relationship with employees. Finally, this practice requires employees to violate Facebook’s Statement of Rights and Responsibilities, which states, “You will not share your password... let anyone else access your account, or do anything else that might jeopardize the security of your account.” Some asset there are legal risks to asking employees and job candidates for their passwords. I am not a lawyer and cannot advise you on the legality of checking social media for information on candidates, but asking for passwords is a dangerous and risky policy.

WHAT EMPLOYEES SHOULD KNOW ABOUT SOCIAL MEDIA:

1. IF YOU MANAGE PEOPLE, NEVER DISCRIMINATE AN EMPLOYEE FOR WHAT YOU SEE IN PERSONAL SOCIAL MEDIA PROFILES WITHOUT CONSULTING LEGAL OR HUMAN RESOURCES PROFESSIONALS: Imagine a scenario: You visit an online forum or social network and find your employees disparaging you, your peers or your company, in full view of prospects, customers and vendors. If you were to discipline the employees or consider a request that they refrain from further criticism, your actions could result in a variety of legal problems, including charges of unfair labor practices by the National Labor Relations Board (NLRB).

Some employees complain are protected by law, others are not. The NLRB is actively shielding workers’ rights to use social media to discuss the terms and conditions of their employment and concerted activity, including organizing. Recent NLRB decisions have ruled against companies that fired employees for complaining about coworkers’ promotions, company policies or managers. Managers cannot know every employment law or ruling, but your HR and legal department resources do. Use them, and do not take unilateral action that can cause you more problems than a whiny employee.

2. WHAT YOU SAY AND DO IN SOCIAL MEDIA CAN GET YOU FIRED: You probably know that social media can help you land a job, if you use it, as it can serve as a new platform to demonstrate your skills to potential employers. Your actions in social media can also tell companies about you. The First Amendment protects your right to free speech, but if you share your personal comments online that a company interprets as potentially damaging to their reputation, they might fire you.

3. YOUR EMPLOYER HAS A GOOD REASON TO MONITOR YOU ON SOCIAL MEDIA: It has been my experience that many employers are concerned about having employees keeping an eye on their posts and tweets. This concern is understandable — there is an uneasy element of Big Brother in monitoring something as personal as your social media activity, but it is also important to recognize that employers have good and reasonable reasons to do so. A lawyer friend of mine recently told me, “Companies do not monitor to pry into the personal lives of their employees. They monitor because they are required to.”

Corporations have a fiduciary responsibility to protect the company’s assets, and those include the reputation of the firm. They also have a legal obligation to protect trademarks and patents to private information about customers. Moreover, the FTC has indicated that companies must monitor the people who have material relationships with the firm to ensure there is no violation of the terms of the social media accounts the employees are using. If your firm in any sort of regulated industry, there are probably a host of regulatory agencies with rules that require monitoring; record retention and auditing policies. Companies are always more likely to lose a qualified candidate than a whiny employee.

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