



PIHRA 2015: California HR Conference

Social Media in Employment Law: Five Years Later

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#pbyp

PAUSE BEFORE YOU POST

Putting It All Together: Social Media Postings Are All About RESPECT

- Two types of respect:
 - (1) Employee's respect for your right to manage your workplace
 - (2) Your respect of your employees' reasonable expectations of privacy

Respect

- Responsibility
- Etiquette
- Selectivity
- Privacy
- Efficiency
- Confidentiality
- Transparency

RESPONSIBILITY

As a manager, YOU are personally responsible for what you post and the company may be too.

Three considerations:

- (1) What you post
- (2) Who sees it
- (3) The damage that can be caused

SELECTIVITY

BEWARE THE SERIAL POSTER

Is it necessary?

Is it important?

Is anyone going to be upset?

PRVACY

The company's general rules on privacy apply equally on social media.

No disclosure of:

- Confidential information about the company
- Private information about your employees
- Your customer information

REMEMBER THE BILLBOARD!

EFFICIENCY

Nearly 1/3 of U.S. adults use social media at least 1 hour/day at work for personal reasons

Over 40% of U.S. adults would not take a job if social media blocked in the workplace

CONFIDENTIALITY

The company's confidentiality policies apply equally to social media

Includes: Business plans, unannounced product lines, sales data

TRANSPARENCY

- When discussing company products, identify yourself as an employee of the company
 - “Astroturfing” claims
 - False advertising claims

\$350,000 Penalty For Astroturfing

The New York Times

Business Day
Technology

WORLD U.S. N.Y. / REGION BUSINESS TECHNOLOGY SCIENCE HEALTH SPORTS OPINION

STEVEN G. MEHTA MEDIAT

Leading SoCal Mediation Specialist Highly Respected Media

Give Yourself 5 Stars? Online, It Might Cost You

By DAVID STREITFELD

Published: September 22, 2013 | 316 Comments

“I celebrate myself, and sing myself,” wrote Walt Whitman, America’s great bard of self-promotion. As the world goes ever more digital, quite a few businesses are adopting that philosophy — hiring a veritable chorus of touts to sing their nonexistent praises and lure in customers.

[Enlarge This Image](#)



New York regulators will announce on Monday the most comprehensive crackdown to date on deceptive reviews on the Internet. Agreements have been reached with 19 companies to cease their misleading practices and pay a total of \$350,000 in penalties.

FACEBOOK

TWITTER

GOOGLE+

SAVE

EMAIL

SHARE

PRINT

REPRINTS

CALVARY
AUGUST 1
WATCH TRAILER

HIRSCHFELD
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HIRING

Some Questions To Ask (and Answer)

- Where do you look?
 - Linked In, Twitter, Facebook, Instagram
- How do you look?
 - Do you get permission first? Will that lead to wiping of the very information you want? (SociallyClean.com)
- When do you look?
 - After a conditional offer is made?
- Who looks?
 - You, an “insulated” employee, or an outside service?

“FRIENDING” CO-WORKERS

Can Co-Workers Really Be Friends?

- Should you allow it? Can you prevent it?
 - 49% of U.S. adults have co-workers as FB friends
- Think about RESPECT issues
 - Harassment
 - The Serial Poster (kids, love life, bikini/speedo pictures)
 - Intimidation: Must you accept a friend request from a supervisor?
 - The problems with un-friending

INVESTIGATIONS

The Law On Private Social Media Pages

It is illegal to access *without authorization* electronic communications that are not public.

What does that mean? Employers cannot force employees to turn over their social media passwords or to provide access to others' private social media pages

But, poor Nurse Debbie's friends sold her out voluntarily, so she did not get her job back

California Law

Effective January 2013:

Cal. Assembly Bill 1844 prohibits employers from requiring or requesting an employee or applicant to:

- (a) disclose username/password for purpose of accessing personal social media;
- (b) access in the employer's presence; or
- (c) or require disclosure

DISCIPLINE AND TERMINATION

What Is A “Concerted, Protected Activity”

1. Protected: It references “terms and conditions of employment,” as opposed to an individual gripe or customer concerns
2. Concerted: It is made “with or on the authority of other employees”
 - a. It involves common concerns of employees or seeks to induce action by other employees
 - Even if there is no “current plan” how to address concerns
 - b. It was directed to an “audience” of other employees or seen by co-workers
3. Calculated Disruption: It is not delivered in “a manner reasonably calculated to harm the company’s reputation and reduce its income.”

#LegalOrNot

Some real life examples of discipline for social media use

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