"Likes" and "Dislikes": Best Practices for Social Media Policies and Training 👍

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Social Media and the Workplace

- Facebook: 2.38 Billion Monthly Active Users

- Twitter: 126 Million Daily Active Users

- Snapchat: 186 Million Actively Daily Users

- LinkedIn: 260 Million Monthly Active Users

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Social Media and the Workplace

- New collaborative workplace sites
  - Facebook Workplace
  - Speakap
- Intra-Office Instant Messaging Systems
  - Slack
  - Chanty

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Social Media Policies and Training Tailored to Your Organization

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We "Like": Social Media Policies and Training

- Evaluate Your Social Media Needs:
  - Does your company utilize social media to sell its products and/or services?
  - How does your company currently utilize social media?
  - What are the goals for your social media policy?
  - What are the current issues with social media usage among your employees?

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We "Like": Social Media Policies and Training

- Best Practices:

  – Avoid "form" or "fill in the blank" type policies.

  – Articulate a clear message for your social media policy.

  – Define social media clearly in the policy.

  – Outline an expectation of confidentiality of corporate information.

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We "Like": Social Media Policies and Training

- Best Practices:

  - A distinction may need to be made for private versus public social media pages.

    - Corporate pages vs. employees' personal pages

  - Reference anti-discrimination/harassment policies.

  - Have employees sign the agreement during the orientation process.

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We "Like": Social Media Policies and Training

- Conduct Training
  - Ensure that all employees are aware of the social media policies and expectations.

  - Training may vary depending on the level of employee and the experience with social media.

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We Dislike

Litigation Involving Social Media

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We Dislike: Suits Involving Social Media

- National Labor Relations Act Concerns:

  – Section 7 of the National Labor Relations Act, 29 USC 151 et seq., provides all employees with a right to engage in concerted activity, including collective bargaining.

  – Section 8(a)(1) of the NLRA prohibits an employer from interfering with, restraining, or coercing employees from exercising their Section 7 rights.

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We Dislike: Suits Involving Social Media

- The NLRB has concluded that Social Media Policies cannot be so broad that they prohibit activities protected by federal labor law

- Social Media Policies also cannot expressly prohibit Section 7 activities, including discussing wages, benefits or working conditions

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We Dislike: Suits Involving Social Media

- Avoid blanket prohibitions on employees

    - talking about their jobs;

    - complaining about their jobs or company policies;

    - posting about wages and hours;

    - posting about working conditions.

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We Dislike: Suits Involving Social Media

- Social media statements are generally not protected if they are "mere gripes" not made in relation to group activity among employees.

    – E.g., ABC Corp sells terrible low quality products: Not protected.

    – E.g., ABC Corp doesn't care about it's employees: May be protected.

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We Dislike: Suits Involving Social Media

- Rules that May Not be Allowed:

  – Broad confidentially rules encompassing employer business or employee information;

  – Rules regarding disparagement/criticism of the employer;

  – Rules prohibiting the use of the employer's name;

  – Rules restricting speaking to the media.

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We Dislike: Suits Involving Social Media

- Rules that Are Allowed:

  – Employers can still require employees to respect IP and proprietary information.

  – Employers can still require pre-approved use of the Company's logos and trademarks.

  – A ban on disparaging the company's employees or using disparaging or offensive language is allowed.

  – A ban on discussing information concerning customers, financial data, or proprietary information is allowed.

We Dislike: Suits Involving Social Media

- Elliott Larsen Civil Rights Act, MCL 37.2101 *et seq*.,

- Title VII of the Civil Rights Act of 1964, 42 USC 2000e *et seq*.

  - "Protected activity" for purposes of Title VII includes "opposition" to discrimination, and this phrase has been interpreted very broadly.

- The Michigan Whistleblower's Act prohibits an employer from taking an "adverse employment action" against an employee who reports or threatens to report an alleged violation of the law to a public body.

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We Dislike: Suits Involving Social Media

- Hiring Practices Concerns:

  – Consideration of factors such as gender, race, and religion is prohibited in hiring practices.

    • Employers should be cautious about accessing social media during the hiring process which may reveal this information.

  – Michigan's Internet Privacy Protection Act (2012), MCL 37.271 *et seq.*

    • It is illegal to ask for private social media passwords from employees and applicants.

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Troubleshooting Social Media Issues

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We Like: Troubleshooting Social Media Issues

- Exercise caution during the hiring process.

- Inform employees of channels through which they may voice their concerns.

- Incorporate labor/discrimination laws.

- Investigate complaints of harassment/discrimination.

- Take appropriate action in response to weaponization of social media.

- Conduct social media training.

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Staying Up to Date on Tech Developments

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Emojis and Social Media

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Emojis and Social Media

- Emojis can change the meaning of certain messages.

- Bloomberg Law Study (2018): smiley face, winking face, face with tongue sticking out, mustache face all among most common emojis in lawsuits.

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Emojis and Social Media

- Bloomberg Law Study (2018): smiley face, winking face, face with tongue sticking out, mustache face all among most common emojis in lawsuits.

- Murdoch v. Medjet Assistance, LLC, 294 F. Supp. 3d 1242, 1246 (N.D. Ala. 2018).

  – Court held that Plaintiff did not find the alleged sexual harassment by her boss unwanted or offensive when she sent him numerous text messages containing smiley faces, which the Court found indicated flirtatious intent.

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Emojis and Social Media

- Takeaways:

  – Emojis are a key example of why it's important to stay up to date on social media developments.

    - There are more and more emojis coming out each year

    - Emojis can have discriminatory meanings in context

  – Incorporate new developments like emojis into your social media training.

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