

# “Likes” and “Dislikes”: Best Practices for Social Media Policies and Training



## We Like

Social Media Policies and Training Tailored  
to Your Organization



# Social Media and the Workplace

- Social Media is becoming more prevalent in society
- New forms of social media are popping up every day

# 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

# We “Like”: Social Media Policies and Training

- *Compliance*
- *Transparency*
- *Consistency*

# We “Like”: Social Media Policies and Training

- Employers must address changing social media needs
- We recommend having a strong social media policy to meet your organizational needs
- The social media policy should be tailored to fit your organization

# 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?

# 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



# We “Like”: Social Media Policies and Training

- Best Practices:
  - Define social media clearly in the policy
  - Outline an expectation of confidentiality of corporate information

# We “Like”: Social Media Policies and Training

- Best Practices:
  - A distinction may need to be made for private versus public social media pages
  - Reference anti-discrimination/harassment policies

# We “Like”: Social Media Policies and Training

- Best Practices:
  - Have employees sign the agreement during the orientation process
  - This will help avoid a circumstance in which the employee alleges that the policy is being arbitrarily imposed on him/her

# We “Like”: Social Media Policies and Training

- The training should ensure that all employees are aware of the social media policies and expectations
- The training may vary depending on the level of employee and the experience with social media

# We Dislike

Litigation Involving Social Media



# 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

# We Dislike: Suits Involving Social Media

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

# 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



# We Dislike: Suits Involving Social Media

- Avoid blanket prohibitions on employees
  - talking about their jobs;
  - complaining about their jobs or company policies;
  - posting about discussing wages and hours;
  - posting about working conditions.

# We Dislike: Suits Involving Social Media

- Rules that May Not be Allowed:
  - Broad confidentiality 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.

# 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.

# We Dislike: Suits Involving Social Media

- Elliott Larsen Civil Rights Act, MCL 37.2101 *et seq.*, and Title VII of the Civil Rights Act of 1964, 42 USC 2000e *et seq.*

# We Dislike: Suits Involving Social Media

- “Protected activity” for purposes of Title VII includes “opposition” to discrimination, and this phrase has been interpreted very broadly to include a variety of actions by employees

# We Dislike: Suits Involving Social Media

- 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

# We Dislike: Suits Involving Social Media

- Hiring Practices Concerns:
  - Another consideration is discrimination in hiring. Consideration of factors such as gender, race, and religion is prohibited in hiring practices.

# We Dislike: Suits Involving Social Media

- 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.



## We Like

Troubleshooting Social Media Issues



# We Like: Troubleshooting Social Media Issues

- Evaluate the social media needs of your organization.
- Exercise caution during the hiring process.
- Inform employees of channels through which they may voice their concerns.

# We Like: Troubleshooting Social Media Issues

- Incorporate labor/discrimination laws
- Inform employees of channels through which they may voice their concerns.

# We Like: Troubleshooting Social Media Issues

- Conduct investigations into complaints of harassment/discrimination on social media.
- Take appropriate action in response to weaponization of social media.
- Maintain transparency/clarity for any disciplinary action taken.

# Emojis and Social Media



# Emojis and Social Media



# 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

# Emojis and Social Media

- Takeaways:
  - Emojis are not going anywhere and their use will only increase over time
  - There are more and more emojis coming out each year
  - Emojis can have discriminatory meanings in context
  - Emojis should be incorporated into social media training