Social Media at Work

Are your employees WILBing on your time?*

by Melissa J. Jackson

Social media is proliferating in the workplace. Facebook, My Space, Linked In, and Twitter have become commonplace on employees' cell phones and computers. Blogging has become a tool for marketing, as well as for revenge. Should an employer be concerned? What could a concerned employer do?

The answer to the first question is that all employers should be concerned. Just a few of the risks of this newest trend include a loss of employee productivity, damage to the employer's reputation, and a breach of confidentiality.

The answer to the second question is to determine the risks that most threaten your business and then take steps to minimize those risks. No matter what risks may be inherent in your organization, one of the first steps you should take is to let employees know what is and is not prohibited. The most common way of imparting this information is through a policy in the employee handbook.

An effective policy will allow effective monitoring. It will serve as a defense to claims of defamation, improper discipline and termination, and invasion of privacy. It will inform employees that social media may not be used to harass or discriminate against others. It will remind employees that any restrictive covenants, such as non-compete, non-solicitation, and non-disclosure obligations, extend to the realm of social media.

The policy also will assist an employer in enforcing the prohibitions consistently and uniformly. For example, will the employer monitor an employee's blogging on the employer's computers and/or an employee's communications over his or her own computer that involve the employer? Most private employers will be inclined to reserve the right to monitor as broadly as possible. However, in January, 2011, the National Labor Relations Board (NLRB) brought charges against an employer because an employee had complained about her supervisor on her Facebook page. The NLRB charged that the employer violated the employee's right to protest her working conditions. That case was settled in February, 2011. Nevertheless, in May, 2011, the NLRB again brought charges against an employer who fired five employees for complaining about their working conditions on Facebook.

The NLRB stated that the posts were protected concerted activity and took issue with the employer's policy, which prohibited employees from making disparaging remarks about the company or supervisors over the internet. This demonstrates that this will continue to be an arena in which the NLRB will be actively involved – regardless of whether the employer is unionized or not.

So, all employers should recognize that social media is useful but also fraught with peril for the unwary. Contact your employment lawyer for assistance in determining what parameters are appropriate for your business and then publishing a clear and reasonable policy that provides notice to employees of what is prohibited. You no longer have the luxury of being IBT! (That's "in between technology"). ◊

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**A translation for the "uninitiated" is Workplace Internet Leisure Browsing (WILB)*