

# Are Your Employees Blogging Your Company Into Bankruptcy?

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With technology growing by the nanosecond, the law can't possibly keep up. Courts around the nation are finding it increasingly challenging to balance the rapid-fire availability of Internet and social media public disclosures and comments against our nation's traditional rights of privacy and free speech.

While we await guidance from our legislative and judicial representatives, as with any employee-related issue, careful documentation is the employer's friend. Here are the top ten issues to cover in your social media policy:

## Acceptable Use of Systems

Address acceptable and unacceptable use of the company's communications systems by employees. If employees can use the company's computers and telephones for personal use, company management may be granting the employees at least a partial right of privacy in their communications sent or received on that equipment. Consider providing the equipment to the employee and prohibiting personal use (even on breaks), to make sure that all content on the communications equipment belongs to and can be accessed by the employer.

## Protection of the Company's Proprietary and Confidential Information

Remind employees that they are forbidden from transmitting, using or disclosing the company's proprietary and confidential information (including customer information). Employees may transfer company data with the best of intentions, but an employee's faulty security systems or sloppy technology operations may leave your company's proprietary information open to hackers or at risk of loss.

## Prohibition Against Discriminatory or Harassing Statements

Employees have the right to post personal comments on their social media pages or on other Internet sites, they may not violate your company policies. When an employee posts harassing commentary on the Internet, the employer may not be able to remove that post, but can certainly discipline the employee. The key is to make sure you are disciplining on the basis of the policy violation, not on the basis of the employee's private Internet posting.

## Prohibition Against Defamatory Statements

The law distinguishes between a post that says "my boss is a jerk" and a post that says "my boss is lying to our customers." The first comment is a protected statement of opinion, and supervisors can do little more than chalk it up to the joy of being in management. The second comment purports to be a factual statement which defames the supervisor and the company, and may cause actual damage to reputation or customer relations. Employees are liable for even privately-posted defamatory statements.

## Required Disclaimers When Mentioning the Company

Employees are entitled to their own opinions, and have every right to express those opinions. When doing so, however, employees must note that their opinions are their own, and do not express the beliefs or ideas of the employer.

## Prohibition Against Unlawful Activity

Employers may instruct employees that the company's communication systems may not be used to promote unlawful activity, such as insider trading, theft of proprietary information, defamation, harassment or other legally-prohibited conduct. Remind employees to follow all applicable laws when acting on behalf of the company or using the company's technology equipment.

## Not Interfering With Employee NLRA or Free Speech Rights

Employees have a protected right to free speech and to engage in protected, concerted activity to protect their rights in the workplace. Communications and social media policies should include reference to the fact that the employer recognizes these important rights and does not intend to interfere with them.

## Reporting Procedure for Violations

Provide a clear process by which employees may raise complaints of inappropriate conduct with regard to technology and communications systems. Doing so will ensure that the company is quickly informed of violations and is made aware of Internet and social media conflicts arising through employee or third-party conduct.

## Right to Monitor Employee Use

Employers have the right to access and monitor employee activity on company computers, telephones, cell phones and other electronic media, but only when the company owns the equipment being used and the employee has been informed of the company's ability and intent to do so. Inform employees that their systems can and will be monitored, even if the employer has no intention of actually doing so. Failure to provide advance notice is akin to conducting a search without a warrant – you may find evidence against the suspect, but you can't use it to convict him.

## Right to Discipline for Violations

Employers have the right to discipline employees for policy violations in the workplace, but employees who haven't been warned that certain conduct may lead to discipline or termination may argue that they were unaware of the relevant prohibitions. Note that violations of the systems use or social media policies will result in discipline and/or termination as necessary.

By clearly outlining employer expectations regarding the company's communications equipment and employee use of the Internet (both inside and outside the workplace), employers can protect their business, information, property, reputation, customer base and employee pool. As with all aspects of employee management, documentation is key, and clear information is critical.



Karen L. Gabler is an employment attorney and co-founder of LightGabler LLP. Karen represents employers and management in all aspects of employment advice and litigation, specializing in proactive strategies her clients can use to enhance employee productivity and avoid employee disputes. For more information regarding social media and systems use policies, or for other questions on employment

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