

4 Ways to Create a Foolproof Social Media Policy

By Marine Cole



Recent federal cases regarding employees' social media posts confirm that employers have little leeway in restricting what their workers can say online, unless they have a specific policy in place.

Imagine this: A server at Hooters posts disparaging comments about co-workers and managers on social media. The company immediately fires her for violating a company's rule that prohibits insubordination to a manager and lack of respect and cooperation with fellow employees.

She sues the restaurant, and wins, as the judge rules that the company didn't adequately define insubordination, lack of respect and cooperation and was too subjective in its social media policy.

Employees shouldn't expect any privacy when using social media sites on devices owned by their employers, including mobile devices, even if they are using their private social media accounts. What employees post from home or from their own devices is sometimes available to everyone to see as well and can also be subject to scrutiny by employers.

The National Labor Relations Board, whose primary responsibility is to interpret and enforce the National Labor Relations Act, has made a point in recent years in protecting the rights of employees regarding murkiness of the ever-changing social media landscape, especially if a company's social media policy is considered too broad or needs interpretation.

"There's a whole area where the employer is vulnerable," Paula Lopez, a partner with Allyn & Fortuna, told *The Fiscal Times*. She added that an



employer's social media policy should be in compliance with the National Labor Relations Act.

There are some basic federal rules to follow when creating a social media policy:

- One is to give notice to employees that their computer usage is being monitored.
- Another is that they shouldn't violate copyright and federal laws when posting on social media sites.
- A social media policy can be found unlawful when it interferes with the rights of employees under the NLRA, including the right to discuss wages and working conditions with their colleagues.

Consequences for employers can be dire if their policy doesn't fully cover them. If a company is in violation of the Act, at a minimum, it could be required by the NLRB to revise its policy. The NLRB could also ask a company to reinstate an

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Allyn & Fortuna LLP

employee who has been fired as a result of violating a social media policy and in some of the most extreme cases to provide back pay and to cover taxes on that back pay if it came as a lump sum.

Here are four tips companies should keep in mind when creating a social media policy:

- 1. Banning access to some sites shouldn't prevent you from having a policy.** You can always prevent employees from accessing social media sites at work but it doesn't mean employees won't post on their own time.
- 2. Be as specific as possible.** This is the most important tip for an employer. If a social media

policy is too broad, subjective and leaves room for interpretation, chances are the NLRB will rule against an employer in any case involving an employee infringing that policy. Businesses need to explain which types of information employees are prohibited from posting. **"An employer should give clear examples of the types of conducts that are restricted," said Lopez.**

- 3. Have the employee sign off on the policy and provide training.** While having the employee sign the policy might be obvious, new hires don't always pay close attention to such forms. Training should be offered to employees in addition to a written

version of the social media policy to make sure they understand the policy.

- 4. Review you policy on a regular basis.**

Technology changes and new social media sites pop up all the time. The NLRB constantly comes up with new rulings giving more details on what a social media policy should look like. **"You should review your policy yearly," said Lopez, noting that whenever the policy changes, employers should distribute the new version, have the employees sign it again and retrain them.**