

7 elements of a social media policy that limits your liability

Whether your employees are blogging reviews on Google, posting endorsement videos on YouTube, getting your company on wiki sites or branding your company on social networking sites such as Facebook, Twitter and LinkedIn, social media is clearly the wave of the future.

Online media like those provide a variety of benefits to organizations. They can help you collect industry-based knowledge, reach new customers, build your brand and publicize your company's name and reputation.

But those benefits come with their fair share of legal risks. You need a comprehensive social media policy to guide employees on your expectations about their online behavior, especially when that conduct occurs in the name of the organization. A policy is the best protection against inappropriate cyberspace conduct.

The downside of social media

Social media can create liability before, during and after your relationship with an employee.

For example, many organizations use social networking sites to investigate job applicants' backgrounds. In the process, they often discover information that isn't job-related, such as political affiliations, disabilities and social relationships. If that information leaks into the hiring process, it can fuel discrimination lawsuits.

Some of your current employees may be posting confidential information on the web, harassing and discriminating against each other and posting improper reviews, endorsements and defamation against competitors.

After employment ends, companies face the task of severing employee "connections" to customers and clients on the company's Facebook and LinkedIn pages, and stopping terminated employees from making negative comments online and

generating bad publicity.

In each of those situations, a comprehensive social media policy can protect you from liability.

As an employer, you're generally responsible for the actions of management-level employees acting within the scope of their employment. You can protect yourself from liability created by rogue managers with a good program of both policy implementation and training.

Here's what your social media policy should address:

1. Use of business-related social media

Address how and when you want employees to use social media to support, market and brand the organization. The policy should also inform employees whether they can affiliate themselves with the company on sites such as Facebook, Twitter and LinkedIn. If your organization does allow employees to associate their online profiles with the company, include guidelines on the permissible contents of that profile.

2. Confidentiality

Inform employees what you consider confidential company information: client names, projects, price lists, vendors and competitors. Tell them that posting confidential materials on social media sites is a disciplinary/firing offense. While you might be held responsible for your employees' actions when client/competitor confidentiality is breached, a good policy will, at the very least, demonstrate that you took precautions to prevent such breaches. This can help limit your liability.

3. Copyright, fair use, financial disclosure

The policy should inform employees that it is improper to use social media to publish protected materials and intellectual property of another company or person.

4. Transparency/disclaimers

The policy should instruct employees to always identify themselves and be honest in their posts about who they are and what they do. When an employee's post to a blog or web site outside your company touches or concerns work in any way, she must state that, "the postings being offered are her own and do not necessarily represent the company's opinions, positions or strategies." This insulates your company from the rogue opinions of employees that could potentially create liability exposure.

5. Language

You can restrict the language that employees use on social networking sites. Specify that you won't tolerate profanity, inappropriate speech or bad-mouthing of other employees. Communicate the expectation that employees should always be loyal to the company when communicating online.

6. Content approval

The policy should require that anything employees post on the company's web site or on "fan" pages must first be approved by a certain department or executive.

7. Disciplinary process

State clearly that violating the policy could lead to discipline or termination. Explain what you mean by discipline—for example, oral warning, written warning, suspension, termination. (In New Jersey, if you have any policies that you distribute to employees, you should also have an "at-will" employment disclaimer stating that the policy does not create a contract of employment and that an employee may be terminated at any time, for any reason.)

Dena B. Calo, Esq., is counsel at Genova, Burns & Giantomasi, a New Jersey-based law firm with offices in Newark, Red Bank, Camden, New York and Philadelphia. She can be contacted at (973) 533-0777.