

# Addressing employee social media misconduct



Social media can be a blessing for modern businesses - but handling inappropriate employee social media activity can be a nightmare. Employee social media use sets the stage for guilt by association for employers. If an employee uses hate speech, makes offensive remarks, posts eyebrow-raising pictures, or performs other questionable actions that could reflect poorly on the employer.

Justification for punitive measures is simpler if an employee makes inappropriate social media posts to the business's own channels, writes using an employer-owned device, or composes on company time. However, things get murkier when the matter involves after-hours behavior on a personal account.

## Approaches to monitoring employee social media vary

Companies vary widely in their level of attentiveness to what employees post on social media. [CareerBuilder data](#) reveals that nearly half of employers say they use social networking sites to research current employees, and 10 percent do it daily. A third of employers have found content online that led to reprimanding or firing an employee. Other organizations deem regular monitoring of non-work accounts as unnecessary, too Big-Brother-ish, or as an invitation to legal headaches.

Whether a company actively monitors employee social media or not, management should always be prepared to address potential issues. Colleagues often follow one another on Facebook, Twitter, Instagram, LinkedIn, and

the like. If someone finds a co-worker's post offensive or potentially harmful to their mutual employer, he may inform human resources. Likewise, upset customers may encounter the post and notify the organization. Ignoring these complaints can damage relationships with staff and members of the public - so it's best to have a plan to address them.

## **Some speech is protected - and some isn't.**

Both workers and employers often misunderstand legal protections around speech. Workers may post without concern for their job because they believe the First Amendment protects them. Similarly, employers may hesitate to call out offenders because of an individual's right to free speech. Both sides must realize, however, that the law offers people freedom from *governmental* restrictions on speech. The amendment does not usually apply to private employers, and companies generally have the right to impose consequences.

That said, organizations still need to watch that they do not infringe on other legal rights. For instance, the National Labor Relations Act enables employees to talk freely with each other about employment and working conditions. This includes topics like pay, hours, and treatment. Management may not be fond of such online conversations, but they must respect an employee's legal rights.

However, employees should not think they have a free pass when it comes to writing about work-related matters. Actions such as revealing inside or financial information, discussing new products before their release, posting information about customers, and ridiculing or harassing colleagues can still land them in hot water. Likewise, employees should think twice about making homophobic, racist, sexist, or religiously intolerant posts.

## **Laws vary across states and employment arrangements**

Legal counsel needs to keep managers and human resource representatives abreast of pertinent state laws. Some states, for example, protect employees from disciplinary action stemming from expressing political views online.

In addition, [employment-at-will](#) laws provide employers leverage when choosing whether to dismiss an employee for conduct on social media. Outside of individual employment contracts or collective bargaining agreements, the majority of work relationships in the United States are considered "at-will." This means an employer can terminate an employee with or without notice for any reason (besides prohibited forms of discrimination or other illegal reasons). Similarly, an employee has the right to quit for any or no reason. Companies concerned about an employee's social media behavior may decide it is in the organization's best interest to terminate and be within their rights to do so. Still, seeking legal input on a case by case basis is always advisable.

## **Policies for preventing and addressing social media related issues**

The most preferable way, of course, for a company to deal with inappropriate social media behavior is to keep problems from arising in the first place. Beyond that, it's key to have a documented and enforceable policy to follow if issues do arise.

**Educate your staff** from day one by making conversations about proper social media usage part of your onboarding experience. Young employees new to the working world especially may need guidance about maintaining a professional image that reflects well on both them and the company. Also, include reminders to check privacy settings on personal accounts and that such measures are not foolproof.

**Create a [written social media policy](#)** that states your organization's code of conduct and procedures should a problem arise. Without commanding workers to keep quiet about working conditions, spell out limits on what topics are legally acceptable while stressing forethought and good judgment. Obtain a signature acknowledging

the employee has read the information.

**Enforce your policy with consistency,** both for the sake of fairness among staff and to help avoid future legal problems. For instance, developing a reputation of calling in people who publish extremely conservative posts and ignoring equally-charged liberal expressions could lead to accusations of bias. Keep in mind the [do's and don'ts of workplace investigations](#) when enforcing policies.

**Clarify who can post on the company's website and social media channels,** as these channels serve as direct reflections of the brand. Provide these employees with additional training on representing the company properly through their language, choice of subject matter, and interactions with readers.

**Re-evaluate your social media policy from time to time.** Revise documents to account for technological advances, legal changes, and unanticipated areas of concern. Review changes with staff to keep everyone up-to-date, on the same page, and (hopefully) on their best behavior.