

Can you afford not having a Social Media Policy for your business?

The Internet has become an all-pervasive part of daily life. Social media platforms have redefined how we communicate. Facebook has 600 million active users; Twitter has more than 200 million. As consumers continue to spurn phonebooks, newspapers, other traditional sources of information, even the smallest of businesses have been forced to establish a presence on the web. But the Internet is a dangerous place. As Congressman Anthony Weiner and thousands of others have discovered, everything on the Web can be traced back to its original source, often very easily. And information is backed up, shared, and re-posted to such an extent that once posted, information is essentially permanent. Although indiscreet or embarrassing posts can damage an individual's reputation, they are no less harmful to a business. This is particularly true if a company fails to provide its employees and representatives with clear guidelines as to what it considers acceptable behavior in the brave new world of social media and the Internet.

The failure to have a social media policy could lead to considerable embarrassment for you and your business. If you have doubts, take a look at scottgotanofficejob.com – a video blog filmed by an office worker via the camera on his laptop when he is supposed to be working. Although Scotty is funny and mostly harmless, his blog tends to humiliate his employer and co-workers and eventually, after dozens of episodes, results in his termination.

While a humorous blog might be embarrassing, much greater harm can come from not having an adequate social media policy. Your employees need clear guidelines to protect the best interests of your company.

The first priority is to let your employees know when they may or may not speak on behalf of the company. If they post on the web concerning matters within their area of job responsibility, insist that they disclose their affiliation with the company. Also, unless you specifically authorize an employee to speak on your behalf, ask they add a disclaimer to any opinions stating that the views expressed are their own rather than those of the company.

In addition to clarifying when an employee may speak for the business, a social media policy is needed to caution your employees about inadvertent disclosure and reinforce company policies concerning the release of confidential information. Unless this point is emphasized, employees may let slip proprietary information concerning how

your business operates or non-public financial data. Equally damaging to your business could be the disclosure of sensitive information that an employee learned about a customer or co-worker. This could lead to anything from lost business opportunities and unnecessary strife among your employees to costly litigation.

Further, in the event your company is already involved in litigation, a social media policy is needed to emphasize the fact that employees may not discuss ongoing legal matters outside of the work environment and, in particular, never mention such matters on the Internet. There is no reasonable expectation of privacy in matters that are posted openly online. And even where an employee has privacy settings in place, attorneys now routinely seek and obtain discovery of private posts and messages. Comments made about pending or anticipated lawsuits, although seemingly innocent, may be taken out of context or cause other communications to lose the protections of the attorney client privilege.

Finally, although some guidance for your employees is necessary, you should be careful not to draft your social media policy so that is too restrictive. Try to control too much and your employees may quit, or more likely, ignore the policy entirely. Further, although some inappropriate online activities – disclosing private customer information or harassing co-workers, for example – will justify firing an employee, other actions, no matter how much they may anger you as an employer, cannot be used as a basis for termination. Even though there is a strong presumption of at-will employment in Indiana,¹ this may include employees griping or making disparaging remarks about their employers on line. In at least one instance – a case involving an employee of a Connecticut ambulance company who was fired after she criticized her supervisor on her Facebook page – the National Labor Relations Board has taken the position that a restrictive social media policy violates the National Labor Relations Act,² which gives employees the right to “discuss the terms and condition of their employment with others.”

Just as it is now necessary for successful businesses to have a presence on the Internet, it is becoming equally important that companies provide their employees with guidelines concerning their use of social medial in the workplace and in connection with their employment. A social media policy that provides workers with clear expectations without being overly restrictive is needed to protect your business, its customers, and your employees. Whether your company is new to the web or is a wholly Internet based business, Tuesley Hall Konopa can assist in creating a new social media policy or updating your existing guidelines to help accomplish this goal.

¹ See *Baker v. Tremco Inc.*, 917 N.E.2d 650, 653 (Ind. 2009) (“Indiana follows the doctrine of employment at will, under which employment may be terminated by either party at will, with or without reason.”).

² 29 USCS § 151, *et seq.*



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