



Nutmeg Chapter

A Chapter of the Association of Legal Administrators

THE NUTMEG ALERT

Nutmeg Chapter, Association of Legal Administrators
Serving Connecticut & Western Massachusetts

The National Labor Relations Board Weighs In On Social Media Policies

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Over the last decade, social networking sites, such as MySpace, Facebook, LinkedIn and Twitter, have shaped the way individuals socialize and interact with one another. Recently, these social networking sites have also permeated the commercial marketplace. Through these sites, companies can interact with and receive instantaneous feedback from consumers, advertise to a widespread audience, and network with vendors and clients. But as the popularity of these sites increases and companies begin to use them for business purposes, new legal risks are emerging, such as disclosure of confidential information, harassment issues, and concerns over misuse and disclosure of trade secrets and intellectual property.

In an effort to address these legal risks, many employers have implemented strict social media policies. Paradoxically, these policies have now, in-and-of-themselves, become a

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President's Message



As the end of another summer approaches, our thoughts once again turn from the hot and lazy days of summer to autumn leaves, cool nights and back to school.

In preparation for the second half of 2012, the Nutmeg Chapter Education Committee has been busy finalizing the remaining events of the year. On Thursday, September 13th at noon, we will host an educational workshop focusing on budgeting and improving profitability as well as IT security. Our final educational workshop of the year will be held on Thursday, November 15th at 4:00 p.m. Immediately following the workshop will be our first ever Pre-Holiday Social. Members and business partners attending the social will enjoy holiday merriment and good food and beverages as together we celebrate the upcoming holiday season. Members attending the social will also have an opportunity to redeem their Nutmeg Poker cards for CASH.

On October 4th, the Nutmeg Chapter will host its annual Business Partner & Member Appreciation Event celebrating our legal profession during Professional Legal Management Week (PLMW). We will also be honoring our business partners for their dedication to, and support of, our Chapter, its members, and its programs. Without support from the business partners, the Chapter could not provide the many educational opportunities and events it offers to its members at little or no cost. The event will be held at the Sheraton Hartford South Hotel (formerly the Rocky Hill Marriott) beginning at 5:30pm. Please join us as we celebrate our profession.

The ALA Region 1 Conference will be held at MGM Grand at Foxwoods in Mashantucket, Connecticut from October 18-20, 2012. Members will have an opportunity to connect with other ALA members in our region and attend interesting educational sessions. I hope to see many of you there.

Finally, please remember to support our 2012 Community Connection Project. We are collecting both monetary and item donations (such as food and toys for cats and dogs) for "Our Companions," a homeless pet sanctuary in Ashford, Connecticut.

Please be sure to check our website regularly for updates. Enjoy the last days of summer! 🍂

— Angie DiDomenico

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legal risk to employers. The National Labor Relations Board (NLRB) has begun closely scrutinizing social media policies and penalizing employers if the policies can be construed to impede the right of employees to engage in protected concerted activity.

Social Networking and Concerted Activity

Whether a company is union or non-union, the National Labor Relations Act (NLRA) protects the rights of employees to engage in protected “concerted activity,” which includes the right of employees to communicate about the terms and conditions of employment. Recently, the NLRB has taken notice of the increased use of social media policies and has developed a particular interest in how these policies impact concerted activity. In fact, the Acting General Counsel of the NLRB has issued three separate memoranda addressing social media policies. In the most recent memorandum, the Acting General Counsel addresses specific language commonly found in social media policies, explaining which provisions are “lawful” and which are “unlawful.” To the surprise of many employers,

a large number of very common provisions were deemed “unlawful.”

For example, the NLRB takes the position that a blanket confidentiality provision prohibiting employees from disclosing confidential information may be construed as prohibiting employees from discussing the terms and conditions of their employment. These policies may have tendency to chill concerted activity. As a result, unless narrowly drafted, such policies are illegal.

Similarly, provisions that prohibit employees from posting demeaning or offensive remarks on social media are also unlawful. The NLRB takes the position that some offensive comments, such as protected criticisms of the employer’s labor policies or treatment of employees, are protected activity. As a result, a policy that prohibits such communications is overly broad and unlawful.

In addition, a policy that prohibits employees from disclosing “personal information” about employees, customers, and vendors may also violate the NLRA unless it is appropriately limited. The NLRB found that this rule could be construed to prohibit disclosure of information about employee wages and their working conditions. As such, the rule is overly broad.

Likewise, a rule that prohibits employees from speaking with the media is also overly broad. The NLRB takes the position that, “while an employer has a legitimate need to control the release of certain information regarding its business . . . employees have a protected right to seek help from third parties

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regarding their working conditions. . . . this would include going to the press, blogging, speaking at a union rally, etc.”

Many employers have tried to avoid the above pitfalls by including a disclaimer at the end of their social media policies, which states, “[t]his policy should not be construed or applied in a manner that improperly interferes with employees’ rights under the National Labor Relations Act.” The NLRB takes the position that this provision will not save the employer if other portions of the policy are overly broad because, “employees would not understand from this disclaimer that protected activities are in fact permitted.”

Drafting a Legal Policy

In light of the NLRB’s position, employers must be extremely careful in drafting social media policies. To ensure that social media policies are legal, employers must scrutinize each and every provision and compare it to the NLRB’s guidance. Employers should review all three memoranda issued by the NLRB and consider adopting portions of the sample policy the NLRB has approved as “lawful.”

Christina L. Lewis is the practice group leader for Hinckley, Allen & Snyder’s Labor and Employment group. She counsels employers in practically all facets of their relationships with employees, and has a particularly strong background in employment litigation. Christina has significant hands-on experience with many of the most difficult issues facing employers today, including discrimination, non-competes, FMLA, and affirmative action, among others. For more, [click here](#).

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