

Getting Linked(With)In the Workplace

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Facebook – The New Cover Letter?

- Generally speaking, so long as a prospective employer does not violate state or federal discrimination laws, nothing currently prohibits an employment decision based on information an applicant places in the public domain.
 - However, in the vetting of candidates, an employer may inadvertently become aware of certain information or characteristics of an applicant that can expose the employer to risk of a lawsuit if the employer makes a decision adverse to the individual based on that information or characteristic.
 - Employers risk learning about applicants' protected characteristics such as disability, gender, national origin, age, and pregnancy status. This information cannot be used in selection decisions.
- As an employer, how do I take precautions to avoid problematic pre-employment screening?
 - When searching social media, have a "non-decision maker" conduct the search and filter out protected information (age, race, sexual orientation, marital status, arrests, etc.) prior to having a decision maker review an applicant.
 - There will always be an inherent risk of relying on inaccurate, outdated, or false information; it is important to have a consistent social media search policy and to document all searches.
- How can this affect applicants?
 - Some of the leading reasons why employers do not hire an applicant are due to information on social media. Examples include provocative photos; references to drinking and drug use; bad-mouthing of previous employers and colleagues.

When is MySpace "My Space?"

- Beginning in 2012, state lawmakers (including New Jersey) introduced legislation to prevent employers from requesting the passwords of an applicant's social media accounts.
- Once hired, when using company equipment, there is no expectation of privacy for employees. Employees must:
 - Abide by non-disclosure and confidentiality agreements/policies;
 - Not speak on behalf of the Company unless designated to do so; and
 - Be permitted to speak to the media.
- While employees of the state enjoy First Amendment protections, their speech (including social media) is protected only when speaking about matters of public concern and the right to free speech must outweigh the government's interest in efficient governmental service.
 - A Facebook post announcing which presidential candidate an employee plans to vote for likely would likely be protected, as it is a matter of public concern.

You(Tube) Cannot Restrict Protected, Concerted Activity

- Section 7 of the National Labor Relations Act prevents employers from crafting social media policies which:
 - Restrict protected, concerted activity;
 - Lead employees to construe the language of the rule to prohibit protected, concerted activity; and
 - Promulgating a rule in response to union activity.
- Employers cannot restrict lawful off-duty social media usage.

Can I Be Terminated in a Snap(Chat)?

- Employers can base disciplinary action or termination on a social media post if it does not violate discrimination or other employment laws.
 - Employers must be cautious and make sure the source is reputable, the search was consistently performed and verify how the information was obtained (public post v. private post).
 - Examples of employees terminated for social media activity include:
 - A barista blogging about annoying facets of his job. He was terminated for blogging on work hours.
 - A math teacher who publically tweeted about her attractive students and that she enjoyed smoking marijuana. She was terminated for the indecent tweets.
- Select states prohibit employers from firing an employee for engaging in lawful conduct during off-duty hours.
 - While New Jersey is not one of the states that currently offers such protection, it is suggested that off-duty, legal conduct on social media, not be a basis for discipline.

Posting a Selfie – Should I Have a Social Media Presence for My Workplace?

- Reasons to “Like” the idea:
 - Websites like Facebook, Twitter, Pinterest, and LinkedIn have membership figures in the millions. In 2016, it has become arguably the best way to market your product or service.
 - While advertisements can be purchased, maintaining a social media presence is rather inexpensive compared to the alternatives.
 - Social media allows a business to easily and expeditiously manage its reputation in a forum accessed by people around the globe.
- Reasons to “Dislike” the idea:
 - Anonymous employees endorsing the company’s own product(s) without fully disclosing the relationship may trigger liability.
 - While a reputation can be mended on social media, it can also be irreparably harmed by customers, clients, or employees using it improperly.
 - For businesses with resources which are unable to maintain active social media monitoring, reviews and complaints can go unnoticed and a lack of response in the social media realm can directly harm a business.

How to Beat the Tweet – Tips for Creating a Social Media Policy in the Workplace

- A well-written social media policy can protect employers and their information if properly drafted. Considerations for a workplace social media policy include:
 - Avoid broad or ambiguous terms
 - Broad language or policies run the risk of violating the NLRA. Terms an employer should avoid include: “inappropriate,” “disparaging,” “disrespectful,” “discourteous,” and “offensive.”
 - Define “confidential information”
 - Provide specific examples such as marketing strategies, pricing policies, or customer lists to avoid the policy violating the NLRA.
 - Give examples
 - Using examples avoids overbreadth and confusion by allowing employees to understand the context within which they can use social media.
 - Do not rely on a “savings clause”
 - A blanket statement stating nothing in the policy is intended to interfere with, restrain, or coerce any employee’s NLRA rights is unlikely to save the policy.
 - Be cognizant of NLRB updates
 - The NLRB is frequently interpreting social media policies, providing guidance on what is permissible.