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Employee Blogging Raises Serious Issues for Employers

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Bloggging has become one of the most popular means of communicating on the Internet. Recognizing this phenomenon, some companies have even begun to support employee bloggging on business-related topics to promote their business agendas. Whether a company decides to support or discourage employee bloggging, it should be mindful of difficult and potentially costly employment and other issues raised by this popular activity and devise a strategy to address them.

What is Bloggging?

A "blog" refers to an Internet online personal journal established and frequently updated by an individual. One survey suggests that some 11 million blogs currently exist. Blogs are generally accessible to anyone with Internet access. A blog is fully searchable through Google or any other search engine, and other blogs can link to it, thereby carrying the blogger's message to millions of viewers. The nature of bloggging encourages a free-wheeling discussion of topics, the direction of which is often beyond a blogger's control. The millions of potential viewers of blogs may include a company's existing and potential customers, existing and potential investors, law enforcement personnel and employees. Accordingly, companies need strategies to manage the tremendous impact this burgeoning medium can have on their public and internal profile.

Need for Bloggging Policies

Any bloggging strategy should start with a bloggging policy clearly communicated to employees. While many employers have adopted policies that regulate and restrict employees' use of the firm's communications systems and business equipment, including computers, Internet access, instant messaging and email, very few have addressed the subject of bloggging. A well-crafted bloggging policy can be tailored to reflect either a supportive or discouraging posture toward bloggging. In either case, however, it should be crafted to avoid legal problems, and corporate embarrassment, while still complying with a number of applicable laws.

Basic Protections

To protect its vital interests, any company's bloggging policy should make clear that employees may not engage in certain conduct with respect to their blogs. First and foremost in this category is the disclosure of company secrets. While existing company policies may provide appropriate restrictions on the disclosure of a company's proprietary confidential information, such restrictions should specifically address potential widespread disclosure on the Internet in an employee's blog. Moreover, any bloggging policy should make it clear that engaging in harmful conduct, such as workplace gossip, posting racially or sexually offensive language or graphics and disparaging co-employees, vendors and customers will not be tolerated. Bloggging policies should also inform employees about the liabilities arising from the unauthorized use of third party intellectual property and the disclosure of other companies' secrets. Companies should advise employees that engaging in any of this behavior may be grounds for disciplinary action.

Employee Education

All bloggging policies should emphasize the very public nature of bloggging. Employees should be reminded of the consequences, to themselves and the company, from public statements in such an unwieldy public forum, including legal, public relations and, ultimately, financial consequences. A bloggging policy should also include contact information for a company resource to field questions on the policy and other bloggging topics.

Prohibiting Blogging about the Company

If it so chooses, a company may adopt a policy prohibiting employees from discussing company business in blogs. Companies often prohibit employees from speaking to the press about company matters, insisting that any such communications be made by an authorized company spokesperson. Restricting comments about the company in a blog is an appropriate extension of such a policy. In adopting such a blogging policy, however, companies must be cognizant of applicable state and federal laws protecting certain employee conduct, such as the New York and California laws prohibiting adverse employment action against an employee engaging in legal recreational activities during non-working hours, away from the employer's premises and without use of the employer's equipment.

Securities Laws and Regulations

Public companies must be especially concerned about the impact of employee blogs. Information appearing in employee blogs concerning the employer's business may improperly disclose "insider information" or violate required "blackout" periods. Information about the company that is inaccurate may also run afoul of securities regulations.

Summary of Basic Elements

A well-crafted blogging policy should include these basic elements:

- Information and education concerning blogging and its impact.
- A clear statement of specifically prohibited conduct.
- A clear statement that violation of the policy may subject the employee to disciplinary action.
- A company resource for questions.

One Size Does Not Fit All

A company's blogging policy should be specifically tailored to its own concerns, culture, industry, business strategy and employees. Cutting and pasting from another company's blogging policy could hamper the efficacy of a company's blogging strategy and could have other unintended consequences, such as negative industry publicity or depressing the morale of company employees.

We Can Help

If you have any questions about Company policies concerning blogging or any other labor or employment law issue, please contact:

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