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Duff on Hospitality Law

Social Networking “Dos” and “Don’ts” for Employers

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Mike Brunet is an associate working closely with Diana Shukis in our Labor, Employment & Immigration group. Both Mike and Diana do a lot of work with our hospitality clients in the areas of personnel and management issues – from creating and implementing comprehensive policies and procedures to providing key, timely advice during volatile workplace situations. Today, Mike tackles the hot topic of employee social networking, from an employer's perspective:

With the recent explosion in popularity of social networking sites such as Facebook and Twitter (and even movies about the social networking phenomenon), employers often ask us how they can use these new tools for human resources, and how to handle the use of social networking by employees. Because information posted on social networking sites is generally viewed by employees as private even when the sites are public, this is a sensitive topic that needs to be handled with care. Here are some general guidelines:

Don't be tempted to dig too deeply into social networking sites to screen applicants.

People have a tendency to post personal details on social networking sites, and there is a risk that by looking at a potential employee's social networking page, you might discover information about the applicant that you would rather not know before making a hiring decision, such as his or her sexual orientation, religion, or disabilities. Even if you decide not to hire the applicant for perfectly legitimate reasons, your discovery of information about the applicant's legally-protected status could lead to a discrimination claim later.

Do have a social networking policy in place.

Although work is rarely the primary topic of social networking posts, employees can use the sites to discuss colleagues, supervisors, and their general work life. Some employees also use social networking sites to discuss their political views, or their opinion of their employer's competitors. The vast majority of such posts are harmless, but there is a risk that they could hurt your corporate reputation, disclose your confidential information, or lead to a potential defamation lawsuit action from a referenced competitor. Beyond risk management issues, social networking use can also significantly impact employee productivity. Creating and publishing a policy regarding social networking can lower the risks associated with employee posts and keep social networking from cutting into working time. In order to distance themselves from the content of their employee's posts, and to minimize risk of legal responsibility for that

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content, many employers also require employees posting on social networking sites to include a disclaimer.

Don't act rashly if an employee violates your social networking policy.

Very few courts have considered social networking issues, so there is little legal authority to guide employers dealing with them. Disciplining an employee for comments posted online could implicate free speech issues, among others. As a result, be sure to carefully analyze the situation and potential discipline before taking action.

Do consider using social networking sites as an instantaneous and inexpensive way to communicate with your employees.

A private Facebook page, for example, could be the source of up-to-the-minute information on events and a repository for corporate policies.

These guidelines cover many of the basics on social networking for employers. However, this topic is broader and deeper than we can cover in a blog entry - please feel free to contact us with questions about your specific social networking situation, or if you need help drafting a social networking policy that fits your business.

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