Collins, Loughran & Peloquin, P.C.

CLIENT ADVISOR

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Social Media and Acceptable Use Policies

Just as the Internet once changed the way we work and think, social media is changing the way we communicate and interact with one another. The increased use and reliance on social media and electronic communication is forcing employers and schools to take a closer look at their acceptable use policies.

An acceptable use policy is a set of rules concerning the permitted use of internet, computer, and technology resources. While acceptable use policies have been around for many years, the growing use of social media has rendered many policies out-of-date and ineffective.

Policies that address social media use are quickly becoming a necessity given the prevalence of social media forums and internet-accessible technology, including "smart" cell phones, tablets, e-readers and computers, which make social media constantly accessible.

In order to maintain safe and appropriate use of new technology and social media, employers and schools are encouraged to review current policies and either expand them to include social media, or adopt and implement separate social media policies.

Public employers crafting social media policies must balance employees' First Amendment rights against the employers' interests, and all employers must avoid banning discussions that may be protected concerted activity.

Contact CLP if you have any questions or concerns regarding your policy.

Confidential Employer Investigations Attacked By the NLRB and the EEOC

Maintaining confidential workplace investigations has long been considered a best practice for protecting the integrity of the investigation, avoiding witness tampering, and minimizing workplace gossip and speculation. Within the last few months, however, two government agencies have come out against employer confidentiality requirements, stating that broad confidentiality requirements or "gag orders" violate employees' rights.

In *Banner Health Systems and Navarro*, the National Labor Relations Board ("NLRB") determined the employer had committed an unfair labor practice "by instructing employees that they could not discuss an internal investigation." The NLRB concluded that absent a legitimate business justification, an employer cannot have a blanket rule requiring confidentiality. It is unclear what level of proof an employer needs to establish in order to justify a confidentiality order.

Around the same time, a New York office of the Equal Employment Opportunity Commission ("EEOC") issued a letter warning an employer that prohibiting employees from discussing an ongoing harassment investigation violated Title VII (the Civil Rights Act). According to the letter, discussing complaints is a form of "protected opposition" under Title VII, therefore any attempt to chill discussion violates the employees' Title VII rights.

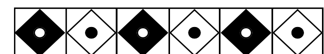
Given these recent developments, employers should carefully balance their need to maintain an investigation's integrity with their employees' rights. Also, employers should consult counsel before disciplining employees who fail to maintain confidentiality.

NOTEWORTHY DECISION

Day Of Discharge Is Day Of Reckoning

Forget about timely weekly, bi-weekly or even electronic payment of an employee who is discharged. Full payment of wages, including accrued vacation, must be made to such an employee on the day of discharge. G.L. c. 149, § 148.

Failure to do so will result in mandatory treble damages. *Dixon v. City of Malden*, 464 Mass. 446 (2013).



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