Hitting the Tweet Spot: Managing Social Media Risk



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The only way to dodge social media risk these days is to abstain from posting, peeking and, with a new ruling from the National Labor Relations Board, liking! And few employers or employees are choosing abstinence these days according to a recent poll. The 2014 Pew Internet Project research survey revealed that 74 percent of adult internet users have at least one social networking site. Fast Company reports that the fastest growing demographic of social media users is mature folk between 45 and 54 years of age. And according to the 2014 Social Media Marketing Industry Report, 97 percent of marketers use social media. Trying to reach stakeholders? The 2014 Nonprofit Marketing Guide reports that nonprofits consider social media communications the third most important communications tool after websites and email marketing, with 86 percent of respondents indicating that social media was somewhat or very important.

Instead of hoping you can dodge legal risk by refusing to jump on the bandwagon, a better approach is to take a few minutes to understand some of the legal risks associated with social media. Armed with a basic understanding of what you're up against, you can focus your attention on the opportunities, instead of the downside risks of using social media tools.

Facets of social media risk are addressed in two risk resources from the Nonprofit Risk Management Center: the ***Staff Screening Notebook***, and ***Exposed: A Legal Field Guide for Nonprofit Executives-2nd Edition***. Order copies of these publications to learn more.

What Could Go Wrong?

In 2010, the National Labor Relations Board (NLRB) began investigating whether some employer social media policies violated employee rights under the National Labor Relations Act. The most recent NLRB social media ruling involved an employer who terminated two employees after they responded to a former employee's Facebook post.

In the recent case, a former employee of the Triple Play Sport Bar and Grille of Waterbury posted a complaint on Facebook after learning that he owed additional taxes due to the company's tax filing error. A waitress at the restaurant commented on the post and a cook "liked" the comment. Both employees were subsequently fired for disloyalty and the cook was threatened with a defamation suit. A court ruled in favor of the two former

employees, who sued the restaurant for wrongful termination. In the subsequent NLRB decision issued in August 2014 the agency found that “We agree with the judge that the discharges were unlawful. We also adopt the judge’s findings that the respondent violated the act by threatening employees with discharge for and interrogating employees about their Facebook activity, as well as by informing employees they were being discharged because of their Facebook activity. In addition, we adopt the judge’s finding that the Respondent unlawfully threatened legal action for engaging in that activity.”

Another downside risk associated with social media is learning something about an applicant through online research that you cannot consider in making the hiring decision. A 2013 survey sponsored by CareerBuilder and conducted by Harris Interactive© found that 39 percent of hiring managers conducted research online as part of the pre-employment screening process for prospective employees. The survey also found that 43 percent of hiring managers who researched candidates online “found information that has caused them not to hire a candidate.” The most common types of information found on social media that led to the disqualification of candidates included: postings of provocative or inappropriate photos or information, information about the candidate drinking or using drugs, and negative comments about a prior employer. Although online research can help employers avoid hiring candidates who are a poor match, such research can also expose an organization to a claim alleging illegal discrimination.

For example, you might learn from social media about the applicant’s religious affiliation or sexual orientation. The decision to include social medial profiles in the vetting process is a business decision. While it is never appropriate to view social media profiles to satisfy your curiosity about a candidate, it may be an appropriate risk if you believe that failing to do so could constitute negligent hiring for certain sensitive positions. If your decision is to continue or start checking social media profiles, make certain you are aware of the types of information you might learn that cannot be used in making a hiring decision.

Order copies of the Center’s publications to learn more about social media risk and more. The ***Notebook*** offers guidance on legal risks associated with the 10 steps in a screening process for paid and volunteer staff. ***Exposed*** covers a wide range of liability risks, from privacy breaches to defamation, to cyber liability and more.

Melanie Lockwood Herman welcomes your questions about employee use of social media and other risk topics at Melanie@nonprofitrisk.org or 703.777.3504.