

Legal Predictions for Employee Social Media Accounts in 2015

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In 2015, I predict an increased focus on employees' rights regarding their personal social media accounts. Since 2012, individual states have enacted laws prohibiting employers from requesting access to their employees' (or job applicants') personal social media accounts. In 2014 alone, six states enacted such laws, bringing the total number of states with this type of legislation to 18.

In addition to individual states' laws, I expect clarification on a national level regarding employer policies and actions related to employees' personal social media accounts. In the past year, the **National Labor Relations Board (NLRB)** has started to focus on whether employer policies regarding employee social media accounts are consistent with the National Labor Relations Act ("Act").

The Act prohibits employers from interfering with employees who come together to discuss their employment for the purpose of collective bargaining or other mutual aid or protection. According to the NLRB, *employees' comments on their personal social media accounts can constitute protected activity under the Act*. One recent NLRB case involved two employees who posted on their Facebook accounts about the employers' alleged failure to correctly withhold taxes from their paychecks. The employer terminated the employees because of their comments on their personal social media accounts. The NLRB found that the employee's comments were protected under the Act, ordered the employer to reinstate the employees, and ordered the employer to clarify its social media policy. The employer is now

appealing the NLRB's determination in court.

I predict not only that more states will enact employee social media account legislation, but also that the NLRB and the courts will provide more guidance on employer restrictions or sanctions related to employee social media use.

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