In recent years, there has been an explosion in the use of social networking technologies. While these technologies represent tremendous opportunities for employers, they also contain the potential for legal pitfalls. It is important for employers and their counsel to understand the benefits, disadvantages and legal issues that can arise when using social media.

Social networking in the workplace

Employers can use social networking sites as resources for marketing and recruiting. As many as 47 percent of employers use social networking sites to look at candidate profiles. A list of justifications for screening applicants through these tools is extensive, and the number of employers taking advantage of it continues to grow. Even the Obama administration required candidates seeking positions in the administration to disclose any potentially damaging e-mails, blogs and text messages, as well as links to their social networking sites for inspection.

Some employers have found there are advantages to allowing employees to use social networking technologies in the workplace because it allows (1) strengthening of professional relationships; (2) promoting the company; and (3) allowing employees to share information with each other.

However, there are disadvantages in using social networking in the workplace, including lost productivity from the time employees spend on these sites.

- 79 percent of employees admit to using social media at work for "business reasons."
- 82 percent of employees admit to using such media during work time for "personal reasons."

Various groups have conducted surveys on the use of social networking in the workplace:

- 74 percent of employees say it is easy to damage a company's reputation via social media.
- 24 percent of employees say they do not know if their employer has a formal policy regarding social networking.
- 15 percent of employees admit that they would comment about their employer online if they disagreed with something the employer did.
- 27 percent of employees say they do not consider the ethical consequences of posting online.
- 37 percent of employees say they rarely or never consider what their boss or colleagues would think.
- 34 percent say they rarely or never consider what their clients would think.

Legal issues

There are also a number of legal issues arising from the use of social media in the workplace. Significantly, employers and their counsel must be cognizant of privacy, confidentiality and privilege concerns.

One issue with using social networking websites to pre-screen candidates is the possibility of discrimination claims. By screening an applicant's Facebook or Myspace page, an employer may become aware of a candidate's race, religion, gender, sexual preference, age, nationality, marital status, disability or other information they would not have been legally entitled to know through a simple interview. The issue then becomes...
proving this information was not the basis for the employer's hiring decisions. However, employers can take actions to protect themselves by implementing and applying a policy regarding the use of social networking in conducting background checks. Additionally, they should limit such screenings to well-trained individuals and have non-decision makers search and filter information.

Another issue that arises is employers being cognizant of invading employees' privacy through the monitoring of these sites. Employees have a privacy interest in the content of information if they have taken reasonable efforts to keep the information private and they derive economic, personal, emotional or other value in keeping the information private. An employer infringes upon this privacy if the employee's interest in keeping the information private from the employer outweighs the employer's interest in obtaining the information. To have a privacy interest in the information, an employee must make reasonable efforts to keep the information private by restricting access.

Conclusion

While employers should embrace social media as a useful resource, they must also be cognizant of the legal issues that can arise. Technology will continue to develop, as will the law regarding its implementation in the workplace.

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