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# Employees and Social Media: Company Best Practices Checklist

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[us.practicallaw.com/1-501-1470](http://us.practicallaw.com/1-501-1470).

A best practices checklist for a company to consider regarding employee use of social media.

## Adopt a Social Media Policy to Encourage Appropriate Employee Use of Social Media

- Send a clear signal about company expectations for employee use of social media by adopting a stand-alone social media policy or including one in an employee handbook.
- Use the policy to remind employees that workplace social media activity is not necessarily private and that the employer can discipline employees for conduct violating employee policies in the social media arena, just as in other arenas. Include (in conjunction with related employee policies) appropriate restrictions covering:
  - employee use of company IT resources;
  - employee use of company intellectual property assets and confidential and privileged information;
  - employee use of third-party intellectual property;
  - protection of third-party confidentiality and privacy;
  - prohibitions against harassment of other employees;
  - prohibitions against discrimination; and
  - prohibitions against defamation and disparagement.

For a model social media policy, see *Standard Document, Social Media Policy* ([us.practicallaw.com/5-501-1524](http://us.practicallaw.com/5-501-1524)).

## Consider Including Protections in Employee Policies and Agreements with Employees on Prohibiting Disparagement Through Use of Social Media

- Preserve good business relationships and promote a positive corporate image by:
  - specifically prohibiting defamation through social media in employee confidentiality and proprietary rights agreements, and other agreements with employees; and
  - amending policies to ensure that employees understand that social media messages may reflect on their employer. Consider requiring employees to state in their social media postings that their views do not necessarily reflect the views of the company.
- Consider including post-employment obligations not to unlawfully disparage the company or its affiliates, employees, customers or suppliers in employment agreements. (Ensure the company is not infringing on the employee's first amendment rights or legal whistleblower protections.)

## Prohibit Employees From Disclosing or Misusing Confidential or Proprietary Information

- Educate employees about the consequences of disclosing or misusing confidential information or intellectual property in the social media context.
- An employee's disclosure or misuse of confidential information or intellectual property could:
  - result in the employee's breach of his confidentiality and proprietary rights agreement with the company;
  - violate the terms of a confidentiality agreement between the company and a third party, causing the company to be in breach;

- jeopardize the company's protections of its intellectual property rights;
  - create embarrassment or confusion among employees or clients;
  - jeopardize the attorney-client privilege between the company and its counsel; or
  - violate securities laws, by selectively disclosing material nonpublic information, by not including appropriate cautionary statements or necessary information along with the disclosure, or by manipulating the market for a company's securities with fraudulent or misleading information. See also *Practice Notes, Disclosing Nonpublic Information* ([us.practicallaw.com/2-382-5502](http://us.practicallaw.com/2-382-5502)), *Complying with Regulation FD (Fair Disclosure)* ([us.practicallaw.com/1-383-2635](http://us.practicallaw.com/1-383-2635)) and *Registration Process: Publicity* ([us.practicallaw.com/1-383-2635](http://us.practicallaw.com/1-383-2635)), and *Article, Guidance Policies on Future Operating Results* ([us.practicallaw.com/4-383-5034](http://us.practicallaw.com/4-383-5034)).
- Amend company policies and employee confidentiality and proprietary rights agreements to address these risks.

### Do Not Allow Employees to Use Social Media to Harass Colleagues

- Include references to social media in anti-harassment policies and any training offered to prevent workplace harassment.
- Make the corporate response to harassment (sexual or otherwise) through social media consistent with the response to harassment in other contexts.

For more information about sexual harassment, see *Preventing and Responding to Sexual Harassment Complaints Checklist* ([us.practicallaw.com/4-500-4326](http://us.practicallaw.com/4-500-4326)).

### Provide Training to Employees on the Appropriate Use of Social Media, and Monitor Use for Compliance

Train human resources management on appropriate and effective employee monitoring and enforcement of the various company policies, restrictions, guidelines and contract provisions relating to social media. However, do so in compliance with employees' privacy rights.

### Avoid Imposing Unnecessary, Impractical or Intrusive Restrictions on Employee Use of Social Media

Disproportionately strict restrictions can undermine employee morale and invite non-compliance, without real benefit to the company in terms of protecting its property, reputation or employees.

### In Summary

#### Do:

- Adopt a social media policy to encourage appropriate employee use of social media.
- Consider including protections in employee policies and agreements with employees on prohibiting disparagement through use of social media.
- Provide training to employees on the appropriate use of social media, and monitor use for compliance.

#### Do not:

- Allow employees to disclose or misuse confidential or proprietary information.
- Permit employees to use social media to harass colleagues.
- Impose unnecessary, impractical or intrusive restrictions on employee use of social media.

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