



## USE CAUTION

### When Managing Social Media in the Workplace

**Twitter, Facebook, MySpace, LinkedIn.** Welcome to the wonderful world of social networking. Or maybe not, if that networking happens to intrude at work.

With the rise in social media, employers face many challenges—and more than a few risks—in properly monitoring workplace access to popular sites, weighing concerns of privacy, and ensuring no unlawful activity transpires on company time.

Be aware of these issues as you separate fact from fiction and shape your business's Internet policies.

1. Using an employee's social media activity to support an adverse employment decision can lead to a wide variety of potential causes of action in any post-termination suit.
2. Special caution must be taken if employees are part of a union. In an adverse employment decision, if the employee's use of a social networking site amounts to concerted activity under the NLRA, an employer's conduct may constitute restraint of a protected activity under labor laws.
3. Employees subject to unfavorable employment actions as a result of using social networking sites may be able to argue they received unequal treatment due to their protected class and charge the employer with discrimination.
4. Employers can also face discrimination claims if they make use of social media sites in hiring and other employment decisions. While it's not illegal to learn about protected characteristics when making hiring decisions, it's important that those individuals making the decisions are trained to be neutral.



5. If an employee uses a site to report that an employer is involved in potentially unlawful activities, and that employee is subsequently disciplined or fired, he or she may have a retaliation claim under Title VII.
6. While there are no published cases that challenge an employer's right to monitor an employee's public Facebook or MySpace page, employers should be aware of privacy laws. Any intrusion into a matter in which an employee has a legitimate expectation of privacy could lead to a claim of invasion of that privacy.
7. And finally, employers should be wary of state laws that require notification prior to monitoring employee e-mail or Internet use.

**The most important lesson is this:** A good workplace policy that addresses the use of social media is absolutely necessary in today's technology-teeming world. At a minimum, that policy should:

- Inform employees that there is no expectation of privacy in their use of a workplace computer.
- Prohibit publishing confidential or proprietary information about the company or employer, and specify the consequences of doing so.
- Reinforce the need to be professional, prudent, and respectful of the company and its customers when privately using a social networking site.

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