

Monitoring employee social media

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Social media is ubiquitous. With our use of social media at an all-time high, employers must take extra care to protect company information. In a world in which employees are live streaming their “everything” on social media, employers must determine whether to monitor employee social media accounts. And it’s not uncommon for employers to do just that. When considering whether to monitor, employers must strike a delicate balance between protecting their business and managing employee privacy expectations. Employers should also consider the potential monitoring pitfalls. Monitoring an employee’s or applicant’s social media account may be unavoidable at times and can provide vital information to employers. It can also provide information employers don’t want. In what circumstances should employers consider monitoring their employee social media accounts?

Reasons to monitor

There are many reasons you may want to monitor social media accounts. You may wish to gather additional information about applicants. After all, knowledge is power. You may want to search an applicant’s social media accounts to see whether she spoke poorly of a former employer or colleagues, or any number of other things.

You may also want access to an employee’s social media accounts to make sure he isn’t posting things that would embarrass the company, including making negative comments about the company or its customers or sharing confidential company information.

What if an employee complains a coworker is harassing her on social media? You may need to

access the social media accounts as part of your workplace investigation.

Reasons not to monitor

There’s more information at an employer’s fingertips than ever before. But gaining it by looking at social media accounts can often provide information you don’t want to know. For instance, you may learn an applicant is a member of a protected category or has a disability based on a social media page. Once you have the information, you can’t unring that bell. If you later decide not to hire the applicant for an unrelated legitimate reason, you still may have opened yourself up to a possible discrimination claim.

Social media searches also create the risk you will learn genetic information about an employee. If the search reveals the employee’s mother is undergoing treatment for breast cancer, you now have possible genetic information about the employee you cannot share or consider with respect to future employment decisions.

You’ve decided to monitor—what now?

You should keep in mind that at least 26 states have legislation regulating social media monitoring and the type of permissible monitoring conduct. Much of the legislation prohibits employers from requiring employees to share log-in credentials or insisting on access to the social media accounts. You are also prohibited from “shoulder surfing.” For Arizona employers, Arizona isn’t one of those states at the time of this printing.

Also, make sure to implement a social media monitoring policy to manage employees’ expectations of privacy. Tell them beforehand what you expect with respect to business-related content in social media posts, including providing examples of prohibited conduct. You should be certain your

social media policy doesn't prohibit employees from engaging in protected concerted activity regarding the terms and conditions of employment.

One final thing to note

No one wants to feel like big brother is always watching them. You should make sure to limit your monitoring to just what's necessary to protect the company. Anything more may feel too intrusive, even in this share-all world.

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