

Can an Employer Restrict What an Employee Posts on Social Media?

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Yes, BUT . . . Employers must take care to craft the policy so that it does not impede employees' rights.

As we explained in last week's post titled [The National Labor Relations Act: An Equal Opportunity Statute](#), regardless of union or non-union status, Section 7 of the National Labor Relations Act grants employees the specific right to engage in "concerted activity" to improve their working conditions. To avoid running afoul of Section 7, employers need to limit the scope of their social media policies to make sure they do not infringe on their employee's ability to discuss topics like working conditions and wages with each other and third-parties, no matter the forum employees use to engage in those discussions.

While drafting a policy that balances the rights of the employees and the employers' interest and advancing the organizations' business goals can be challenging, employers can keep these dos and don'ts in mind.

DO:

- Create a social media policy and provide it to your employees.
- After the social media policy has been distributed, offer employees an opportunity to ask questions about the policy.
- Prohibit the disclosure of confidential or proprietary information in the policy, providing examples of what is covered under the definition of 'proprietary' and 'confidential'.
- Advise employees that their social media posts on their personal accounts represent their own individual thoughts and should not be attributed to the company.
- Do provide illustrative examples making it easier for employees to understand and differentiate what behavior is permitted from what is prohibited.

DON'T:

- Be ambiguous or vague about what your policy covers.
- Make your policy overly broad so that it includes activities that you did not intend it to.
- Prohibit employees from discussing wages, working conditions, and performance with each other or third parties.
- Rely on a savings statement that states the policy is not intended to limit employees' Section 7 rights.
- Forget to update your policy on a regular basis as more forms of social media develop and/or the legal landscape changes.

While this post provides some general guidelines, crafting a social media policy can be tricky. [Contact a member of the Wilentz Employment Law team](#) for help creating a policy that serves your business' specific interests.

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