



Dissing Boss Online May Be OK, If Coworkers Join In

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If you take a minute and look at social media statistics, you'll notice the numbers are staggering. Facebook has more than 800 million active users. Twitter posts 66,667 tweets every minute. And more than one million companies have LinkedIn pages. And for employers, workers are increasingly prone to using these online platforms as personal stages for letting their voices be heard by anyone with an Internet connection. Derisive comments about companies, supervisors and coworkers are increasingly common.

With the surging use of social media, employers must take notice about what their employees may be saying online. But regardless, it appears that less than half of our nation's employers are keeping a meaningful eye on their workers' online activity. Indeed, according to one survey released earlier this year, only about 44 percent of companies even have policies that deal with employee use of social media.

But companies have a lot at stake, whether for the purpose of protecting brand identity, maintaining product credibility or protecting the employees who work for them. But what can employers do with and to employees who post negative or disparaging information? With all of these competing interests boiling every day in an Internet-driven cauldron, many employers are left wondering whether they should encourage, discourage or limit social media use when it impacts their business, customers and employees.

One of the most visible intersections where the use of social media collides with employer interests is in the area of management labor relations, where employees have historically been recognized as possessing important rights to express their views about wages, hours and working conditions. In an effort to provide guidance to employers who wish to comply with the National Labor Relations Act, the Office of the General Counsel, a division within the National Labor Relations Board, has issued a number of Advice Memoranda — largely analyses of recent cases — to provide a roadmap for administering social media policies. Unfortunately, this guidance has done little to illuminate the dividing line between permissible and impermissible intrusion by employers into the rights of employees who use social media to express opinions and concerns about the workplace.

It is clear the NLRB will be keeping an eye on employer attempts to regulate employee use of social media, and that the employers who discipline their employees for such expression may be assuming

significant risk. Here's hoping the NLRB will draw more definitive lines on social media rights and responsibilities in the near future.

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