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Ten Key Human Resources Mistakes (And How to Avoid Them)

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Simple mistakes by human resources can create serious problems in the business and costly and time-consuming litigation. Recognizing common mistakes and being proactive about avoiding them can save countless headaches and protect your organization against legal claims. This paper outlines ten key human resources pitfalls to watch out for and explains how to avoid them in your organization.

I. FAILURE TO DEVELOP A STRATEGY FOR HANDLING SOCIAL MEDIA IN THE WORKPLACE

Social media has, in many ways, become the modern “water cooler” – a gathering place for employees to have both work-related and personal discussions. As a result, social media is now a hotbed for employment issues. Indeed, it is commonplace for employers to search social media websites before hiring an employee, terminate an employee for comments on social media or receive complaints from co-workers regarding remarks made by other employees on social media sites.

Despite this, many employers have no policies or procedures in place with regard to how employees should be restricted in the use of social media or how their organization will handle the effects of social media on the workplace. This lack of preparedness can lead to inconsistent handling of social media issues (or worse) unlawful disciplinary actions based on social media discussions. Accordingly, it is imperative for employers to know the law regarding social media in the workplace, determine their approach to handling social media issues, and adopt social media policies that provide clear guidance to employees on the appropriate use of social media and yet do not dissuade employees from engaging in activities protected by state or federal law. Equally important, employers should train employees on social media policies.

Below are a few key points for employers to consider:

A. Determine Your Organization’s Approach to Social Media

Each company should decide how it wants social media to be used in the workplace. While some companies may want to encourage employees to use social media to promote its business and products, other companies may feel more comfortable with placing some restrictions on its use. Regardless, it is important for companies to engage in a dialogue about the role they want social media to play in their organization.

B. Adopt a Social Media Policy

Employers should consider adopting a social media policy to encourage the appropriate use of social media. Such policies should:

1. plainly set forth the employer’s expectations for employee use of social media;
2. inform employees that social media activity using the employer’s electronic information and computer systems may not be private and that

the employer can discipline employees for conduct violating employee policies;

3. clearly provide that employees have no authority to represent or act as an agent of the company while using social media, unless they have the company's approval;
4. educate employees about the consequences of disclosing or misusing confidential information or intellectual property in the social media context; and
5. reiterate the company's anti-harassment policies to help prevent workplace harassment through the use of social media.

C. Include Appropriate Social Media Use in Employee Training Programs

Employers should also train employees on appropriate use of social media (for example, as part of a new employee orientation program). Specifically, train human resources and management on appropriate and effective employee monitoring and enforcement of the various employer policies, restrictions, guidelines and contract provisions relating to social media, including: permissible types of electronic monitoring and surveillance and employee privacy rights.

D. Recognize Protection of Employee Concerted Activity in Social Media

The National Labor Relations Act (NLRA) has emerged as the leading statute used to govern social media in the workplace – both in union and non-union workplaces. Employers should ensure that they understand what social media activity may be considered a protected concerted activity and which will not. Section 7 of the NLRA (29 U.S.C. § 157) protects a worker's right to engage in "concerted activities," which means the right to act with co-workers to improve wages and working conditions.

On August 18, 2011, and again on January 24, 2012, the National Labor Relations Board ("NLRB") Office of the General Counsel released a report summarizing cases concerning the protected and/or concerted nature of employees' social media postings and the lawfulness of employers' social media policies and rules. *See* OFFICE OF THE GENERAL COUNSEL, DIVISION OF OPERATIONS-MANAGEMENT, OM 11-74, REPORT OF THE ACTING GENERAL COUNSEL CONCERNING SOCIAL MEDIA CASES (2011); OFFICE OF THE GENERAL COUNSEL, DIVISION OF OPERATIONS-MANAGEMENT, OM 12-31, REPORT OF THE ACTING GENERAL COUNSEL CONCERNING SOCIAL MEDIA CASES (2012).

These reports emphasize two main principles: (1) employer policies should not be so broad such that they prohibit, discourage or chill activity that is protected by Section 7 of the NLRA; and (2) employee comments on social media networks will be protected if they are associated with an expression of shared concern.

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