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Social Media: Employee Ideology v. Company Values

**Jason Boulette
Lee Crawford**

Author Contact Information:

Jason S. Boulette
Boulette Golden & Marin L.L.P.
Austin, Texas 78746
Jason@boulettegolden.com
512.732.8901

B. Lee Crawford Jr.
City of Austin Law Department
Austin, Texas 78701
Lee.Crawford@austintexas.gov
512.974.2421

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I. INTRODUCTION

As mobile technology and social media continue to evolve, individuals are increasingly able to express their personal beliefs to wider and wider audiences. At the same time, many companies—particularly in the technology sector—are becoming increasingly forceful in how they articulate the social values on which they are founded, often in the hopes of attracting and retaining talented employees who share those some values. In combination, these two phenomena create a new world of conflict between companies and those employees who publicly broadcast views that are at odds with those of organization.

A. Overview

This session will explore the practical and legal challenges presented when agents are recorded, depicted, or seen expressing views on social media in a way that conflicts with a company’s cultural values. At a high level,

Protection for Private and Public Employees – If an employee’s speech opposes a discriminatory *employment* practice (as opposed to a general societal practice), it may be protected under the anti-retaliation provisions of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), or other employment discrimination law, regardless of whether the employee works for a private (non-governmental) or public (governmental) actor.

Protection for Private Employees – Although employees in the private (non-governmental) sector do not have any First Amendment protections, their speech may be protected under the National Labor Relations Act, if it is sufficiently connected to the terms and conditions of their employment and is asserted not just on behalf of themselves but also on behalf of others.

Protection for Public Employees – Public (governmental) sector do have not protection under the National Labor Relations Act, but their speech is entitled to a significant level of protection under the First Amendment to the extent it involves a matter of public concern and does not relate to their official duties. In addition, whereas private sector employees are not usually protected from discrimination on the basis of political or party affiliation, most public employees are protected from such discrimination as a result of the right of freedom of association under the First Amendment.

B. Corporate Values

In 2017, Harris Poll conducted an online survey of employees in the United States on behalf of Glassdoor.¹ Although the disclosure located by the author did not reveal the sample size, sample composition or demographics, the questions used in the survey, or the study’s methodology, Glassdoor reported that 75% of employees age 18-34 expect their employers to take a stand on

¹ <https://www.prnewswire.com/news-releases/harris-poll-corporate-reputation-politically-polarized-as-companies-wrestle-with-taking-a-stand-for-their-values-300404867.html>.

important issues, including immigration, equal rights, and climate change, more than any other age group. Glassdoor further stated that 84 percent of U.S. workers believe companies have an important voice in proposed legislation, regulation, and executive orders that could affect the employer's business or the lives of employees. Finally, Glassdoor further suggested the data indicated that employers who take a stand on issues may have a recruiting advantage (without offering specifics about what the data actually was or why it was interpreted to suggest this). "Today's informed candidates want to work for companies that are actively engaged on topics that directly impact their lives and align with their beliefs," said Dawn Lyon, Glassdoor chief reputation officer and senior vice president of global corporate affairs. "Today's candidates, especially younger job seekers, want to work at companies that take a stand and take action."² At the same time, it is a publicly known fact that a number of companies—particularly those in the technology sector—have taken forceful positions on issues such as immigration, LGBTQ rights, and equal pay.

In a similar vein, Reward Gateway, an employee engagement company, surveyed 1,500 workers and 750 senior decision makers across the United Kingdom, United States, and Australia regarding the importance of corporate mission and values.³ Noting that Reward Gateway sells a solution to the problem it has identified, their findings are at least noteworthy:

- 89% of employers say it's critical to the success of their business that employees understand their mission;
- Only 25% of employees feel completely informed about their employer's corporate mission;
- Only 32% of employees feel completely informed about the values of their employers;
- 84% of senior decision-makers agree their company is doing enough to recognize employees who demonstrate the values their company cares about the most;
- 33% of employees do *not* agree that their employer recognizes them when they demonstrate the values their company cares about;
- 86% of senior decision makers say that their organization is transparent with employees about how they plan to achieve the company mission;
- Only 30% of employees say they strongly agree that they trust their employer to communicate information openly and honestly.⁴

In other words, Reward Gateway's survey suggests companies agree employees need to be aware of and aligned with the company's mission and values. Moreover, companies believe they are doing a good job of keeping employees informed and recognizing them when they display the

² <https://www.glassdoor.com/blog/corporate-social-responsibility/>.

³ <https://www.rewardgateway.com/press-releases/new-research-reveals-breakdown-between-employees-and-employer-in-recognition-trust-and-communication-of-mission-and-values>.

⁴ *Id.*

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