

BLOGGING IN THE WORKPLACE

When Does Personal Opinion End and Protection of Corporate Image Begin?

Blogging* has now risen to an acceptable level of employee internal communication in today's corporate workplace. What kind of blogging is considered viable and what kind of blogging is to be defined as either slander or insubordination for which an employer has the right to terminate the "blogging" employee is the central question. If your employees are finding new ways to communicate, then companies must find innovative ways to deal with this new form of communication.

Blogs are proliferating as fast as a computer virus. According to a report this year by public relations firm Edelman and Inteliseek, more than 10 million blogs will exist by the end of 2005. Together, the various blogs link up to what is known as a "blogosphere" otherwise known as a collection of internet conversation that is becoming one of the fastest growing areas of new content on the World Wide Web. Whether they are individual or part of a blogosphere, blogs can wreak all kinds of havoc for their employers. Employees who create blogs set up a direct way to communicate about their company with the public because clients and customers can stumble across a blog at any time while using the internet. Bloggers have known to divulge many things—from the habits of their co-workers and supervisors to posting pictures of yet to be released products. At present, blogging represents a scenario of the legal system trying to keep us with changes in surrounding technology. There are few cases to follow around the country and, to say the least, there has been no precedent set by any state or federal court in this area at this time. It is unclear what the precise standards will be in any given jurisdiction.

So, what is a legal or human resources department to do when confronted with this issue? First, if the employee is blogging during company time this, by itself, will constitute a breach of the standard company policy even if there is no disparagement. If, on the other hand, the employee is blogging after hours, your company may still have recourse. Many companies are laboring under the mistaken impression that what is said in a blog is automatically and unqualifiedly protected as free speech. Remember, the First Amendment does not protect communication in the private sector. Bloggers have no more rights than anyone else to disparage corporate propriety, image or reputation. As a start, employers should establish written blogging policies that alert employees to potential liabilities and reiterate the obligation to protect confidential information. Employees should be encouraged at all times to use good judgment and sound discretion in connection with their blogging action. Clear examples should be provided to employees of what is and is not permissible and a corporate representative should be appointed to deal with employees' questions in close cases, perhaps on a confidential basis. Employers should also make it clear that violation of blogging policies constitutes a legitimate ground for termination. Some companies have taken the first step of enacting blogging policies and procedures as a function of updated their corporate employment policies and practices. These policies should be established as distinct and separate policies from any existing email practices

and policies that your company may presently maintain. Several prominent national companies, using existing email policies as a point of reference, have implemented some of the following guidelines:

1. Your corporate policy should include a disclaimer that the opinion in the blog belongs to the particular person and does not represent the position or opinion of management.
2. Blogging is prohibited to divulge confidential information such as proprietary information or trade secrets as it would otherwise be in other forums from public disclosure.
3. All blogging must not contain content that reflects negatively on the company. For example, any references to race or to a co-employee's physique, for example, are not permissible.
4. No use of a company logo, trademark or slogan can be used at any time with the blog.
5. Develop working policies that address the policy of off-site blogging.
6. Blogging is not to be done during normal business hours.
7. Some companies have even posted their own blog about irresponsible blogging.

Notwithstanding the existence of these policies, bloggers do have certain rights to express themselves. If a blogger discloses his religion or sexual preference, for example, he can alleged discrimination. If for example, a blogger discusses wages, benefits or other components of work or attempts of unionize employees, any effort to stop him from this may be a violation of certain rules and regulations under the National Labor Relations Board. Additionally, federal and state whistle blowing laws may protect employees who blog about certain matters of public interest. Moreover, employees in several states could have recourse to an anti-SLAPP statute in connection with blog related actions.

Any proactive steps, such as the ones suggested, will provide useful guidance to employees who wish to blog and, at the same time, protect the employer from undue interference. Please feel free to call us for further information in this developing area.

* On the internet, a blog is a personal journal that is frequently updated and intended for general public consumption. Blogs generally represent the personality of the author or reflect the purpose of the website that hosts the blog.