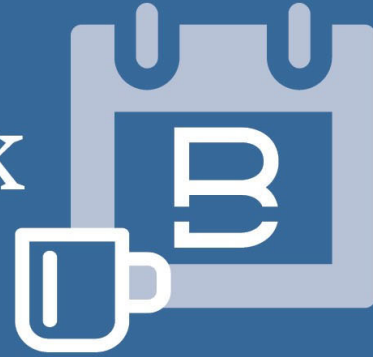


The Work Week

Bassford Remele Employment Practice Group



September 25, 2023

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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#BadBoss: How to approach negative or slanderous commentary on social media

What happens when an employee engages in slanderous commentary online or on social media? What can an employer do to combat this?

In the hit NBC show *Parks & Recreation*, one of the employees Donna Meagle tweets complaining about work and her boss, Leslie Knope. The episode spirals into a frenzy and Donna shares “the only reason I’m even on Twitter is to blow off steam about work.” In the end, Donna and Leslie agree that she has the right to her personal Twitter account and airing her personal views online.



Source: causeallkindsoftrouble.tumblr.com

tumblr.com

While employers have an interest in protecting the company's reputation, employees also have rights to engage in protected activities. Here are some steps to follow if you are struggling with an employee publishing negative commentary or slanderous information on social media:

1. Document

Be sure to collect the evidence and document the statements, photographs, videos, and other posts the employee publishes. Screenshots are helpful, as links can be taken down and posts deleted.

2. Review Company Policies

Some employers have policies that address social media use as it relates to the workplace. This can include using social media during the workday or online behavior. Check the company policies on whether it is up to date and clearly defines expectations for employees on social media. This may also include disciplinary actions for when employees violate the policy.

3. Consult Legal Advice

Consulting legal advice is critical, as each situation presents a different set of circumstances. An employee complaining online about the company's products it sells is very different from an employee posting online discussing illegal activity by their employer. Employers should be cautious in addressing employee social media posts when the content relates to workplace conditions, as the employee could be entitled to protections. However, employees have less protections when the statements they publish about the company or working conditions are untrue and damaging (i.e. defamation). Employees also have less protection relating to matters outside of work, such as publishing offensive speech that would impede on the employer's obligation to comply with anti-discrimination laws and protect other employees from a hostile work environment.

Investigating and analyzing the state and federal laws at play in each situation should be done with the advice of counsel.

4. Confront the Issue Privately

Involving Human Resources and opening dialogue with the employee is a way to initially attempt to resolve the issue. Open communication can help alleviate the employee's underlying grievances or misunderstandings that are being published online.

5. If Needed, Take Action (just make sure it is legal)

If the problem persists and the employee continues to damage the company's reputation and violate company policies, corrective action may be necessary, such as taking disciplinary measures through a written warning, suspension, or termination.

Minnesota is an at-will employment state, meaning an employer may terminate an employee at any time for any reason – so long as it is not illegal (for example, discrimination). But what can be tricky for employers is that employees are permitted to engage in protected activities, such as whistleblowing or exercising their legal rights. This is why it is critical to consult legal advice in different circumstances.

At Bassford Remele, we help advise and counsel employers on how to handle employees who are posting damaging commentary on social media to ensure they are complying with state and federal law when resolving the issue. Please reach out if you need any assistance in addressing this issue or in developing a company policy on social media use.

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