The Work Week

Bassford Remele Employment Practice Group

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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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Social Media Postings: Employers Proceed with Caution

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Employers should proceed with caution before terminating workers over social media activity, particularly in an environment where online reactions can escalate rapidly. The widespread response to comments following the death of Charlie Kirk underscores how quickly public sentiment and political pressure can influence employment decisions. The widespread public posting of Kirk's death—both critical and compassionate remarks—amplified scrutiny on both companies and employees. With intense attention on these online posts and calls for dismissals from high-level government leaders, many employers now face increased risk when responding to social media controversies.

In the private sector, most employees work under an at-will arrangement, meaning they can be discharged for almost any non-discriminatory reason, including expressing political opinions online. Although private employers may enforce policies promoting a respectful workplace, these rules must not infringe on employees' rights protected under federal labor law. Specifically, the National Labor Relations Act allows employees to engage in protected concerted activity. This includes taking collective action—or acting on behalf of other employees—to improve working conditions, pay, or terms of employment. Online discussions addressing these issues, even if critical or politically charged, may fall under that protection.

Before taking disciplinary action over social media activity, employers must also confirm they are not violating state laws that safeguard employees' online privacy or political expression. The First Amendment does not extend to workers in private employment, but certain jurisdictions, such as California and Colorado, bar discrimination or termination based on political beliefs.

Additionally, several states protect employees from adverse action for lawful off-duty conduct unrelated to their employment. These statutes aim to prevent employers from punishing workers for activities that are legal yet personally objectionable to management. However, if such conduct directly conflicts with legitimate business interests, employers may still act. Accordingly, when addressing politically sensitive posts, employers should carefully evaluate whether the speech genuinely threatens the organization's reputation or operations.

Public employers are governed by different constitutional constraints. Under the First Amendment, speech by a public employee is protected if it concerns a matter of public interest or is made in the employee's capacity as a private citizen without severely disrupting the employer's mission. Yet this protection is limited, particularly in sensitive federal positions. In a notable federal district court case, a former FBI agent challenged his termination after sending text messages criticizing President Trump. The court upheld his dismissal, finding the agency's need to maintain neutrality outweighed the agent's speech rights.

Given the controversy surrounding reactions to Kirk-related posts, organizations in all sectors should reevaluate their social media policies. A sound policy should avoid vague language, limit personal social media use during work hours, and promote professionalism. It should remind employees that discriminatory or harassing posts, even outside the workplace, may lead to discipline. Employers should connect these rules to their existing code of conduct and make clear that misrepresentation of the company is prohibited. In this political climate, clarity and communication are essential to help prevent liability and workplace conflict.

At Bassford Remele, we actively track emerging and upcoming legislative developments in employment law, with particular attention to workplace policy shifts influenced by recent state and federal regulatory changes. Feel free to reach out if you need assistance in this continually evolving landscape!

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