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Can you discipline workers for their raunchy Facebook postings?

The Internet has created a whole new pond for employment lawyers to fish in. But you're not powerless to your employees' embarrassing—and potentially illegal—online activities. You can discipline employees who go over the line.

Recent example: The Charlotte-Mecklenburg Schools in North Carolina fired one employee and disciplined seven others recently for offensive postings on Facebook, a social networking web site.

The fired worker had posted a photo of himself shirtless and listing “Chillin wit my n___as” as a favored activity. An elementary school teacher had listed “drinking” as a hobby. And a high school special-ed teach wrote “I’m feeling pissed because I hate my students!”

Employers have the right to hold their employees responsible for such off-duty, online postings if employees use the postings to attack the company, harass co-workers or even violate company policy by drawing negative attention to the organization.

Employers can regulate such off-duty actions only within narrow limits. You should specify what off-duty activity is prohibited in terms of unbecoming, immoral or illegal behavior.

The U.S. Supreme Court has said a California fire department was allowed to terminate a firefighter who posted video online of himself stripping out of his uniform. Such “free speech” wasn’t protected, the court said, because it “was detrimental to the mission and functions of the employer.

But be aware that disciplining employees for off-duty conduct outside work is a slippery slope. Federal law is silent on the issue, but more than half the states have some sort of law banning companies from taking action against workers because of their off-duty conduct.

For example, About 20 states and the District of Columbia prohibit employers from discriminating against workers because they smoke. Another nine states have broader laws that ban discrimination based on a person's use of "lawful products" or participation in "lawful activities."

Establish link to job performance

Here's the litmus test: If a worker's off-duty activity puts your company in legal or financial jeopardy, the courts will be more likely to let you regulate it. You'll be on safer ground if you can prove a direct link between the conduct and the worker's job performance. Be able to clarify a legitimate business reason that's backed by company policy.

For example, a Minnesota appeals court upheld the firing of a police chief who often left the station to have an extramarital affair. He later claimed his actions were private, but failing to notify staff of his

whereabouts went against police department policy.

Regulating employees' off-duty conduct: 5 ways to avoid legal trouble

1. Focus on the effects on job performance, rather than the circumstances of the off-duty conduct, when disciplining employees.
2. Clarify a legitimate business reason that's communicated to employees through company policies.
3. Avoid blanket anti-moonlighting rules or restrictions against socializing with competitors. If you want to protect your company's trade secrets, have all employees sign nondisclosure agreements.
4. Check your state's rules and get legal advice before firing or disciplining a worker for his off-duty activity.
5. Be evenhanded. Apply the same level of scrutiny across the board and be consistent with your past discipline. You can't suspend one employee for off-work behavior and then ignore another under similar circumstances.

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