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Social Media in the Workplace

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If you don't have a Facebook page already, create one," advises marketing expert Ross Fishman. He also advises hopeful business generators to "keep it casual but professional." Lots of people have not followed this advice: for example, the 13 Virgin Atlantic cabin crew members who posted disparaging remarks about the airline and its customers on Facebook; and the Google new-hire who divulged confidential information about the company's financial situation and planned product offerings in his blog.

The bad news for employers is that they may face legal liability when employees engage in this kind of activity, regardless of whether it happens at work or at home. Employees who post derogatory comments about co-workers' race, sexual orientation, religion, or any other protected characteristic put their employer at risk of a discrimination claim. Employees who post rumors or offensive false statements about co-workers put their employer at risk of a defamation claim. Employees who post sexually-charged or offensive information put their employer at risk of a hostile work environment claim.

The good news for employers is that they may take steps to reduce the risk of liability by creating a social media policy that, among other things, states that the misuse of social media may result in disciplinary action, up to and including termination; prohibits employees from posting during business hours, unless for business reasons; prohibits employees from disclosing proprietary and confidential information; prohibits employees from posting false information about the company, employees, and customers; and prohibits employees from making representations on behalf of their employer.

Although employers are allowed to implement a social media policy, there are some legal constraints they should consider before taking adverse action against employees, such as: how the employer accessed the information; whether the employee was engaged in legal off-duty activity or protected concerted activity (such as trying to unionize); whether the employee could be protected under a whistleblower statute; and whether the posting related to political activities or affiliations.

Employees need to know that misusing social media may have dire consequences for them as well as for their employer. Employers and employees alike benefit from written guidelines that communicate clear expectations about the appropriate and inappropriate use of social media. Contact one of KDG's employment attorneys for help.