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## Social media, e-mail misuse can be controlled

In the past year, the law of social media and e-mail usage in the workplace has evolved and grown exponentially.

It is now essential for every employer to understand how they can control employee misuse of social media and e-mail.

Such misuse can include but is not limited to the following: 1) Disclosure of an employer's trade secrets and proprietary information; 2) the leaking of confidential information, such as marketing tactics or pricing strategies, to the public; 3) statements broadcast by employees in violation of the Illinois Consumer Fraud Act; 4) endorsements that violate Federal Trade Commission regulations; and/or 5) employee posting of inappropriate, discriminatory, harassing or potentially criminal content.

Additionally, employers may be harmed by employees engaging in seemingly benign conduct such as checking work e-mail during off hours without authorization, which can result in employer liability under federal and state wage-and-hour laws.

Employers should also be wary of the use of social media in employment decisions and in connection with the hiring process.

Although "friending" co-workers and potential employees can assist with networking and the promotion of collegiality at the workplace, it can also lead to increased liability. Individuals might reveal on social media certain protected characteristics

about which an employer might not otherwise have any knowledge, including religious beliefs, disability status or sexual orientation.

Complaints or evidence of harassment or discrimination as well as threats of workplace violence might also appear on social media.

Communication of workplace complaints via social media can force an unsuspecting employer to conduct a lengthy and expensive investigation that could result in a costly adverse employment action and/or settlement. Violations of certain laws can result in litigation, which would necessitate the use of outside counsel. Government investigations can also result in outside counsel fees and the potential for payment of costly fines.

What steps can an employer take now to prevent misuse and minimize potential liability and costs? The monitoring of employee Internet usage and e-mail sent and received at the workplace on company systems and devices is one strategy to reduce potential problems. Any employer monitoring of employees, however, should be judicious, limited and pursuant to a company policy that is communicated to employees that specifies limitations on employees' privacy expectations.

Employees with protected characteristics should not be a target of this monitoring. Additionally, Illinois employers should be aware of a recent amendment to the Illinois Right

### MARGO'S MASTER PLAN



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to Privacy Act that prohibits employers from requesting that employees or prospective employees hand over passwords for their social networking accounts.

Employers also should implement and actively maintain policies governing employee use of the Internet, social networking and e-mail on company equipment. Those policies should be carefully drafted so as not to run afoul of the National Labor Relations Act's protection of employees' rights to discuss the terms and conditions of their employment.

Recent communications from the NLRB indicate that the most enforceable social media policies are those that are the most specific in the type of communi-

cation that would violate company policies. General prohibitions on negative comments in the workplace would likely be considered overly broad and in violation of the National Labor Relations Act.

Additionally, employer Internet and social media policies should require that if employees use accounts to market a company's business, the employees should use corporate accounts, not their personal accounts.

For hourly employees, make sure to monitor their Internet and e-mail usage after hours to ensure that their communications do not lead to unpaid overtime. Hourly employees should have specific hours of work, rest and meal periods; employers should confirm that there can be no work outside of those times without permission. Employers should control work-related equipment and consider carefully who should receive company computer equipment such as laptops and mobile devices.

Social media, Internet usage and e-mail are here to stay. Employers must stay up-to-date with the latest laws and strategies to protect their companies from needless liabilities and costs.

Drafting and implementing a strong and enforceable policy on social media, e-mail and Internet usage that is tailored to your company's needs is essential to any company's business today to avoid unnecessary expense and to keep your company's business running smoothly.