



LAW UPDATE LABOR AND EMPLOYMENT

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CONSIDERATIONS FOR A SOCIAL MEDIA USAGE POLICY

Social media . . . we all know what it is, and the vast majority of people have personal social media accounts that they use to view, post, and share content online. The ease of posting to social media platforms is so effortless these days that people often post, share, or comment without really thinking about what they're putting out into the universe.

What happens when a local educational agency (LEA) employee is connected to a social media thread that includes inappropriate or questionable content and the LEA employer is notified of it? More times than not, when contacted by a client requesting advice on a personnel issue there is an element of social media woven into a sordid tale of off-the-clock behavior. In the majority of instances involving personal social media content and discipline, our first question is "does your district have a social media policy?" This question tends to be followed by a long pause and some version of "no ... I don't think so" and an audible silent epiphany. The million-dollar question that follows is, "can we still discipline the employee for this personal social media post?"

When clients pose this question, they are really asking if they can legally subject an employee to discipline for off-the-clock behavior that has come to the attention of the employer because it was posted online and viewed by members of the school community (i.e., administration, other employees, families and students, or even media outlets) and reflects poorly on the district or school community, or demonstrates poor judgment, and/or is unprofessional. Generally, without a specific board policy establishing an employer's expectations of employees' personal social media usage, the answer is going to depend on what board policies regarding professional conduct the LEA has and if there is a nexus between the off-the-clock social media profile/content that connects to the employee's employment with an LEA. Unfortunately, in many instances if the LEA does not have a specific social media usage policy, the best advice we can provide is to have an informal conversation with the employee and advise them to use privacy settings on their social media accounts and to be mindful of how their posts could reflect poorly on their professional life.

The last two years of tumultuous times have required all of us to be constantly Zooming and almost continually connected to the internet. We have had some version of this conversation

with countless clients enough times that we question why it is that many LEAs do not have personal social media usage policies establishing expectations for employees. After a diligent search of template policies on GAMUT, the only template policy listed is Board Policy 1114, District-Sponsored Social Media, which provides guidance on how LEAs can use social media for business purposes. BP 1114 provides useful parameters for understanding the role of social media within the education environment, but it is silent on the issue of employees' online personal profiles or usage. BP 4119.1, Civil and Legal Rights, touches on the issue of an employee's personal life outside of work, and discusses that generally it "is not an appropriate concern of the district except as it may directly relate to the employee's performance" of their duties. However, no further language is included to provide guidance on the meaning or scope of the phrase "may directly relate to the employee's performance" of their duties.

Some LEAs in California have taken the initiative on this issue and adopted board policies on expectations for staff personal social media usage. The following sample language from various LEAs provides a good starting point for developing an enforceable policy:

- Although staff members enjoy free speech rights guaranteed by the First Amendment to the United States Constitution, certain types of communication, typically by virtue of their subject matter connection to campus, may relate enough to school to have ramifications for the author or subject at the [LEA] site.
- Off-campus internet usage is largely unrelated to school; however, in certain circumstances courts have held that the off-campus online communication may be connected enough to campus to result in [staff] member discipline.
- Employees and associated persons are responsible for information they post, share, or respond to online. Employees and associated persons should utilize privacy settings to control access to their personal social media accounts.
- Online content can be spread in mere seconds to a mass audience. Employees are encouraged to ask themselves before posting any information online whether they would be comfortable having this information printed in the newspaper alongside their photo [and job title].
- If you identify yourself online as a school employee or associated person, ensure that your profile and related content are presented in a professional manner to colleagues, parents, and students.
- Employees must be mindful that any internet information is ultimately accessible to the world. To avoid jeopardizing their professional effectiveness, employees are encouraged to familiarize themselves with the privacy policies, settings, and protections on any social networking websites.
- Employees are encouraged to monitor their "online identity" by performing search engine research on a routine basis.
- Before employees create or join an online social network, they should ask themselves whether they would be comfortable if a "friend" decided to send the information to their students, students' parents, or their supervisor [or newspaper!].

- Educators should give serious thought to the implications of joining an online social network. If you would not bring it into a classroom, do not post it online.

The key component of the sample language above is that it is tied to the heightened standards of professionalism that are associated with working in the education sector. The template board policies for professional standards that apply to all education employees state:

The Governing Board expects district employees to maintain the highest ethical standards, behave professionally, follow district policies and regulations, abide by state and federal laws, and exercise good judgment when interacting with students and other members of the school community. Employees shall engage in conduct that enhances the integrity of the district, advances the goals of the district's educational programs, and contributes to a positive school climate. (CSBA Sample BP 4119.21, 4219.21, 4312.91).

Educators in particular are further expected to “accept the responsibility to adhere to the highest ethical standards” – a standard that does not contain any language limiting this expectation to only times when they are performing their duties. (CSBA Sample 4119.21) The internet and social media have vastly expanded the circumstances in which an education employee can be “interacting with members of the school community,” intentionally or unintentionally. It is now very easy for an employee’s off-the-clock social media usage to become conduct that does not enhance the integrity of the district, fails to advance the goals of the district’s educational programs, and falls far short of contributing to a positive school climate.

LEA employers likely can set written expectations for employees establishing clear requirements of how they expect employees to conduct themselves in accordance with the heightened level of professionalism, even in their usage of personal social media, because it could potentially involve interacting with members of the school community. It is our recommendation that our clients internally discuss whether they should adopt a social media usage policy to establish employer expectations, and potential consequences, for employees’ social media usage.

Please feel free to contact our office if you would like more information on this topic.

~Tumara M. Thelen

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