DO NOT CUT AND PASTE - WHY YOUR COMPANY NEEDS TAILORED SOCIAL MEDIA POLICIES AND PROCEDURES

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By: Erinn L. Rigney

The advent of social media has changed the way we communicate with the world. Companies and individuals alike now have powerful and unmediated platforms from which to broadcast any information they choose. This widespread use of social media presents both robust opportunities and significant risks.

Whether you are a public or private company or a non-profit organization, and whether your company uses social media for business purposes or is simply populated by employees who use social media for professional and personal reasons, social media engagement is a virtual certainty. For this reason, it is imperative that your company have written social media policies and procedures in place. This will encourage responsible use of social media by your company and its employees. Written policies and procedures also facilitate a clear understanding of your company's expectations about how it is portrayed on social media, while respecting your employees' rights to use and enjoy social platforms.

More specifically, it is important to have bespoke social media policies and procedures in place that are tailored to the unique business objectives and legal needs of your company. Companies that simply "cut and paste" social media policies and procedures from publicly available sources inevitably find that these fall short. Indeed, relying on generalized social media policies and procedures - or worse, ones that were written for another company entirely - can put your company and its employees in jeopardy.

Here are five reasons to seek experienced counsel to assist in the drafting of tailored social media policies and procedures for your company:

1. THE TONE OF YOUR POLICIES AND PROCEDURES MATTERS

Your social media policies and procedures, like any other policies and procedures, reflect your company values. Thus, it is important that the tone echo the unique attitude and qualities of your company. For example, a start-up marketing company that employs 20-something computer engineers will likely adopt a different tone in its social media policies and procedures than a long-standing investment management company with a more established C-suite and board. In both instances, you will have to communicate important legal principles and other parameters in the right tone. If you are working off of a cut-and-paste, tone will be lost, and in turn your employees will struggle to relate to and internalize the policies and procedures.

2. YOUR CORPORATE STRUCTURE MUST BE CONSIDERED

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Without exception, social media policies and procedures must take into account the structure of your company, including whether you are a public company, a large or small private company, a non-profit organization, or otherwise. Public companies in particular are subject to specific rules and regulations that must be considered when crafting social media policies and procedures. Failure to consider these rules and regulations could result in significant consequences. Private companies and non-profits have their own unique considerations that also cannot be overlooked when preparing social media policies and procedures. In the absence of a tailored policy, this is a pronounced risk.

3. THE NATURE OF YOUR UNDERLYING BUSINESS WILL GOVERN THE CONTENT OF YOUR POLICIES

In a similar vein, when developing your social media policies and procedures, you will also have to take into account the nature of your underlying business as this will largely govern the content of your policies. For example, if you are in a highly regulated industry such as cosmetics or pharmaceuticals, you will have different social media considerations and will have to incorporate different parameters than a construction company or an arts-based non-profit. To the extent a particular industry mandates certain disclosures in connection with a public statement, or requires that certain information remain confidential, your social media policies and procedures will have to reflect this. Whether there are express rules and regulations that govern your industry or simply tried and true best practices, failure to consider these will render your policies ineffective, at best.

4. OVERLY RESTRICTIVE POLICIES MAY RUN AFOUL OF EMPLOYMENT REGULATIONS

While the risks associated with widespread employee social media use are well known, companies cannot prohibit all speech or otherwise issue a blanket rule that chills employee speech. Indeed, such blanket prohibitions are in violation of the National Labor Relations Act ("NLRA"), which protects both unionized and non-unionized employees' rights to engage in concerted activity. Thus, it is imperative that you do not overregulate, despite any temptation to do so. Rather, social media policies and procedures must strike a balance between providing clear guidance as to what is acceptable in light of company culture and business dealings, without infringing on speech. A cut-and-paste social media policy that does not take into consideration these nuances may contain unlawful provisions, including provisions prohibiting employees from discussing wages or working conditions, or other language that likely conflicts with the NLRA and other statutes. Furthermore, form policies tend to be more general in scope, and typically include sweeping restrictions on offensive or disparaging comments, which though well intentioned, can also be overly broad and can land you in hot water. A tailored and comprehensive social media policy will address the types of activities that are prohibited while acknowledging that certain speech is permitted, and will incorporate examples to ensure clarity and compliance with relevant employment regulations.

5. SOCIAL MEDIA POLICIES AND PROCEDURES SHOULD BE COHESIVE WITH ALL OTHER COMPANY POLICIES AND PROCEDURES

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Finally, to be effective, your social media policies and procedures must be cohesive with all other company policies and procedures, including any existing policies and procedures that govern your organizational structure, protection of your trade secrets and confidential information, expectations surrounding company personnel, workplace safety, discipline, honesty, harassment and retaliation, and more. For public companies with policies reflecting their obligations to investors, such as insider trading policies and Regulation Fair Disclosure policies, these also must be consistent with any social media policies. Non-profit entities likewise must align fundraising guidelines, matters of conflict, and expectations of board members with social media policies and procedures. A cut-and-paste policy by definition will not be cohesive, and will result in inconsistencies and questions as to expectations, protocol, enforcement, and potential liability.

Drafting compliant and effective social media policies and procedures can be overwhelming. Experienced counsel can help you navigate the issues and craft policies and procedures that are precisely tailored to your company's needs.

KEY CONTACTS



ERINN L. RIGNEY
PARTNER

CHICAGO
+1.312.807.4407
ERINN.RIGNEY@KLGATES.COM

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