
Social Media in the Workplace:

Helping Employers Navigate Legal Risks in the Age of Facebook
and Twitter

Tuesday, May 10, 2011

Foster Pepper PLLC
Seattle, Washington

Presented by:



Table of Contents

- Presentation
- Speaker Bios
 - Steve Peltin, Foster Pepper PLLC
 - Steve DiJulio, Foster Pepper PLLC
 - Katie Carder McCoy, Foster Pepper PLLC
 - Janelle Milodragovich, Foster Pepper PLLC
- Speaker Materials

Presentation

Presented by:

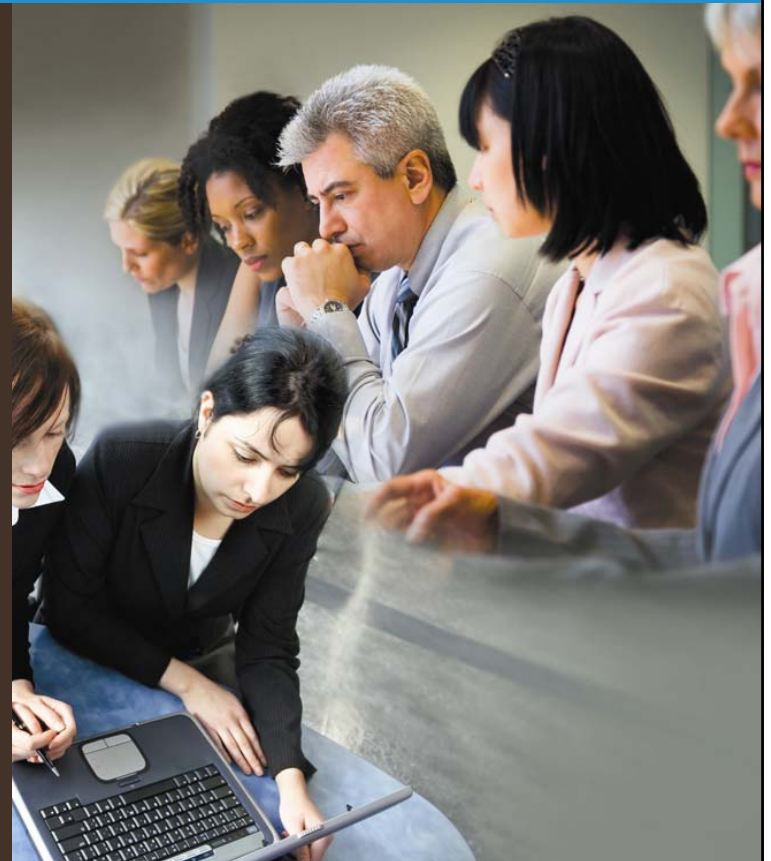




FOSTER PEPPER PLLC

Managing Social Media Employment Issues

May 10, 2011



Employment Law Update



Genetic Information Nondiscrimination Act of 2008 (GINA)



New GINA EEOC Regulations

- Bar workplace **discrimination** based on genetic information
- **Encourage** genetic testing, yet ensure that results are **not used** to deny coverage or inform employment decisions
- **Prohibit** employers from acquiring genetic information from employees or family members (*six narrow exceptions*)
- **Protect** confidentiality of genetic information

TAKE-AWAYS: Reduce Non-Compliance Risks

- **Train** managers and supervisors
- **Update** policies and procedures
- **Include** “safe harbor” language in medical information request forms
(e.g., FMLA and ADA forms, fitness for duty certifications)
- **Update** EEO postings

<http://www.washingtonworkplacelaw.com/regulatory-compliance/genetic-shakeup-understanding-the-genetic-information-nondiscrimination-act-of-2008>

<http://www.washingtonworkplacelaw.com/private-employers/have-you-reached-the-gina-safe-harbor-medical-information-requests-must-comply-with-gina-regulations>

Fair Labor Standards Act – No Retaliation

- FLSA prohibits **discharge** or **discrimination** against any employee who “has filed any complaint” or instituted FLSA proceeding.
- Recent **U.S. Supreme Court** decision:
 - *Kasten v. Saint-Gobain Performance Plastics Corp.*
 - “filed any complaint” includes **oral** as well as **written** complaints.

TAKE-AWAYS

- **Don't ignore or minimize** written or oral employee complaints
- If contemplating later disciplinary action against a complainant, **carefully consider impact** on possible retaliation lawsuit.

<http://www.washingtonworkplacelaw.com/private-employers/some-things-dont-have-to-be-in-writing-supreme-court-protects-employees-against-retaliation-after-ma>

Break Time for Nursing Mothers

- **Patient Protection and Affordable Care Act** requires employers to provide reasonable break times for nursing mothers
- **Amends FLSA**
- Enforcement **based on** statute's language and preliminary interpretations
 - *Fact Sheet 73* <http://www.dol.gov/whd/regs/compliance/whdfs73.htm>
 - *No regulations coming*

<http://www.washingtonworkplacelaw.com/regulatory-compliance/give-moms-a-break-anticipating-final-regulations-on-break-time-for-nursing-mothers>

TAKE-AWAYS: Nursing Breaks Basics

- **How many** breaks?
- **How long** should the breaks be provided?
- **Where** should breaks take place?
- Are breaks **paid**?
- What does **WA State law** say?

The SAFE Act

Requirements for Financial Sector Employers:

- **Protect** consumers and **prevent** fraud in residential mortgage loan business
- **Require** mortgage loan originators to:
 - Register with Nationwide Mortgage Licensing System and Registry
 - Obtain a unique ID number
 - Maintain registration
- **Deadline:** July 29, 2011.

TAKE-AWAYS: Financial Institution Employers Must

- **Require** mortgage loan originators to comply with SAFE Act requirements:
 - Register
 - Obtain ID number
 - Maintain registration
- **Adopt** and **follow** written policies and procedures to ensure compliance

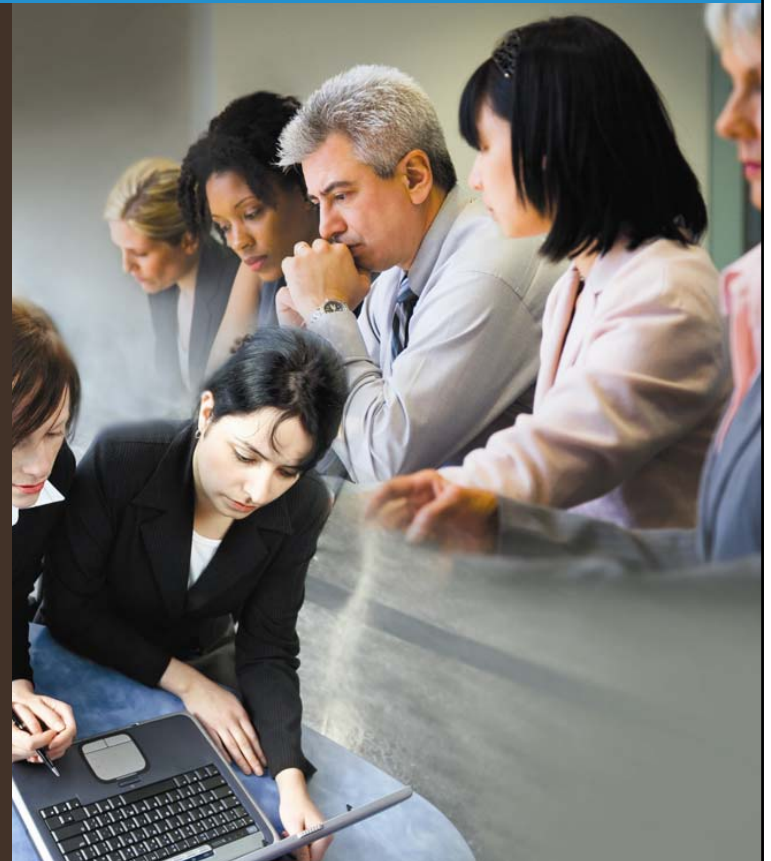
<http://www.washingtonworkplacelaw.com/private-employers/cleaning-up-the-mortgage-meltdown-new-safe-act-requirements-for-employees-in-the-financial-industry>



FOSTER PEPPER PLLC

Managing Social Media Employment Issues

May 10, 2011



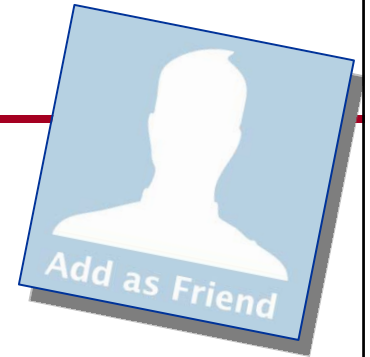
A blue cartoon bird with a yellow beak and feet stands on a wooden stage. The stage is framed by a grey archway and red curtains. A speech bubble points to the bird from the right. The background is a dark grey wall.

PART 1:

Social Media
Explosion



Presentation Outline:



What is social media and who cares?

Risks of **employer-sponsored social media**, including recruiting and hiring

Risks of regulating **off-duty use of social media**

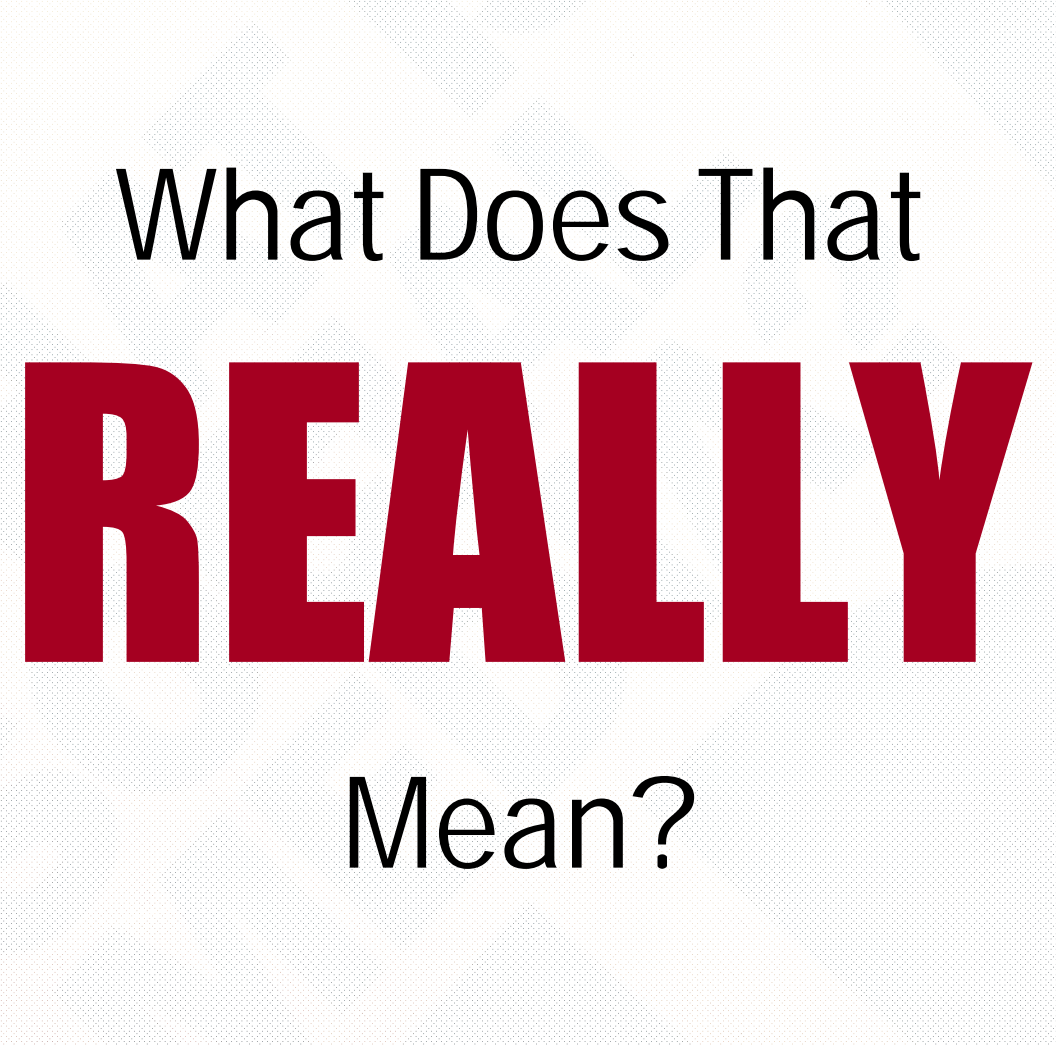
Special considerations for **public employers**

Preparing an effective **social media policy**

Important **Workplace Issues**

- The social media landscape is rapidly changing
- **Limited law**
- **Challenge = balancing risks v. rewards**



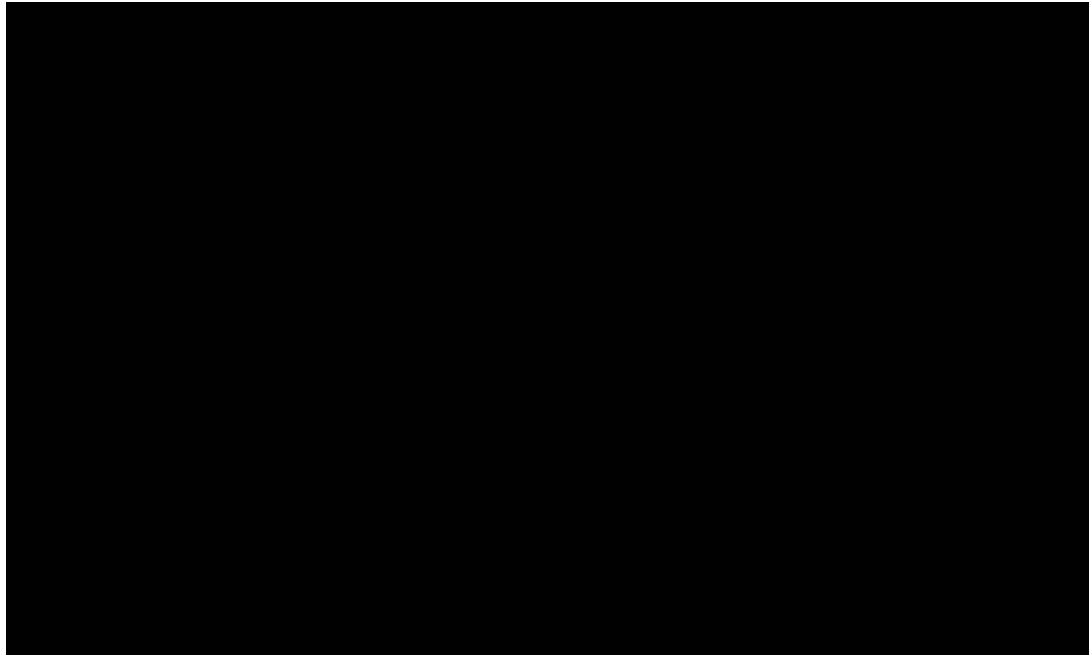


What Does That

REALLY

Mean?

Social Media Is...



Social Media Explosion

Google

You Tube

Youtube is the **second** largest search engine on the web
50% of YouTube's 300 million users go at least once a week.

YAHOO!

bing

Ask

2010
↑
2009

Facebook usage
is up 40%
since last year.



The average user
on facebook has
120 friends



2.5 billion
photos are uploaded to
facebook each month



6 months
ago

65 million
facebook users access
the site through their
mobile phones. That's
up 100% in the last
6 months.



there are over
70 translations
available for facebook.



3.5 billion
pieces of content are
shared each WEEK on
facebook.

96%

of 18-35 yr olds. are on a social network



Social Media Explosion

**57% OF PEOPLE TALK TO PEOPLE
MORE ONLINE**

THAN THEY DO IN REAL LIFE

**48% OF YOUNG AMERICANS
SAID THEY FIND OUT ABOUT
NEWS
THROUGH FACEBOOK.**



**A RECORD-BREAKING
750 MILLION PHOTOS
WERE UPLOADED TO FACEBOOK
OVER NEW YEAR'S WEEKEND.**

Social Media Explosion

Linked 



Contains profiles of
Fortune 500 executives
and leading entrepreneurs

Average individual salary
on LinkedIn is \$109,000

Social Media Explosion



Social Media Also Is This...

Im drunk.. At work. MY BAD.

about 2 hours ago via T-Mobile Sidekick



[Redacted Name]
[Redacted Bio]

And This...

Fresh Blackerry Curve (At&T) for sale Just stole it from work !

about 3 hours ago via Echofon



XXXXXXXXXXXXXX
XXXXXX

A blue cartoon bird with a yellow beak and feet stands on a wooden stage. The stage is framed by a grey archway and red curtains. A speech bubble points to the bird from the right. The background is dark grey.

PART 2:
Employer-Sponsored
Social Media

Employer-Sponsored Social Media

HOME ABOUT SERVICES CONTACT ARCHIVES

 FOSTER PEPPER PLLC

Washington Workplace Law

LABOR RETALIATION & OVERTIME UNION
EEOC DRUG TESTING ORIGINAL LEAVE PRIVACY
POLICY SCHEDULE RR
FMLA BREAK TIME DISABILITY HARASSMENT
DISCRIMINATION NLRA PERSONNEL FILE FLSA
NON-COMPETE INDEPENDENT CONTRACTOR

Employer-Sponsored Social Media



seattledot

@seattledot Seattle, WA
Seattle's Department of Transportation. This site is not monitored. Comments, list of followers subject to public disclosure (RCW 42.56).
<http://www.seattle.gov/transportation/>

[Follow](#) Text follow seattledot to 40404 in the United States

Timeline Favorites Following Followers Lists

seattledot seattledot
Collision at S Spokane St & SR-99 has been cleared.
13 minutes ago

seattledot seattledot
Collision at S Spokane St & SR-99 motor vehicle collision - SB left lane blocked
28 minutes ago

seattledot seattledot
From S. Seattle Beacon: "Caution: Road work ahead, SDOT: Roads to be smoother, safer after upcoming Georgetown project"
<http://tiny.cc/2t28w>
15 hours ago

seattledot seattledot
@mountaingrrrl Glad you like it (<http://ow.ly/4NhwR>). SDOT is continuing its work to build out the Bike Master Plan.
18 hours ago

wsdot_traffic WSDOT Traffic **t1** by seattledot
On SR 520 westbound at Midspan there is a disabled vehicle blocking the right lane.

seattledot is on Twitter

Don't miss any updates from seattledot. Get your account on Twitter today to stay up-to-date on what interests you!

[Sign up »](#)

About @seattledot

2,976 Tweets 11 Following 2,960 Followers

Following 11

About Help Blog Mobile Status Jobs Developers Resources © 2011 Twitter



City of Seattle



facebook

Search

Seattle Department of Transportation

Government Organization · Seattle, Washington



Wall

Seattle Department of Transportation
During Mercer ramps closure, expect heavy traffic at Stewart St exit and on Denny Way. Consider alternate routes: SR 99 or other I-5 exits.
18 hours ago

Seattle Department of Transportation
Reminder: closure of I-5 on-/off-ramps at Mercer Street from 11 PM on Friday, May 6, to 5 AM on Monday, May 9. <http://tiny.cc/r1zam>
18 hours ago

Seattle Department of Transportation
Paving the way for a smooth ride on Dexter

Dexter paving May 4th, 2011 10:15 am
www.flickr.com
Dexter paving May 4th, 2011 10:15 am
20 hours ago · Share

Carbina Martinez Resendez likes this.

Seattle Department of Transportation
Seattle designated a platinum-level Walk Friendly Community for pedestrian planning, infrastructure and safety work: <http://tiny.cc/suhzg>
April 26 at 4:39pm
2 people like this.
View all 2 comments

212 people like this

Likes See All

 Aurora Traffic Safety Project

Employer-Sponsored Social Media



The image shows a screenshot of the REI Twitter profile page. At the top left is the REI logo, which consists of a stylized tree and mountain range above the letters 'REI'. To the right of the logo, the name 'REI' is displayed with a blue verified account checkmark. Below the name, the handle '@REI' and location 'Seattle, WA' are shown. A bio reads: 'We inspire, educate and outfit for a lifetime of outdoor adventure and stewardship.' Below the bio is the website URL 'http://www.rei.com'. Underneath the profile information is a 'Follow' button with a plus sign and a text-based follow option: 'Text follow REI to 40404 in the United States'. Below this is a navigation bar with tabs for 'Timeline', 'Favorites', 'Following', 'Followers', and 'Lists'. The main content area displays four tweets from REI, each with a small profile picture icon, the name 'REI', and the text of the tweet. The tweets include links to articles and social media posts.

REI  **REI** 
@REI Seattle, WA
We inspire, educate and outfit for a lifetime of outdoor adventure and stewardship.
<http://www.rei.com>

[+ Follow](#)  Text follow REI to 40404 in the [United States](#)

Timeline Favorites Following Followers Lists ▾

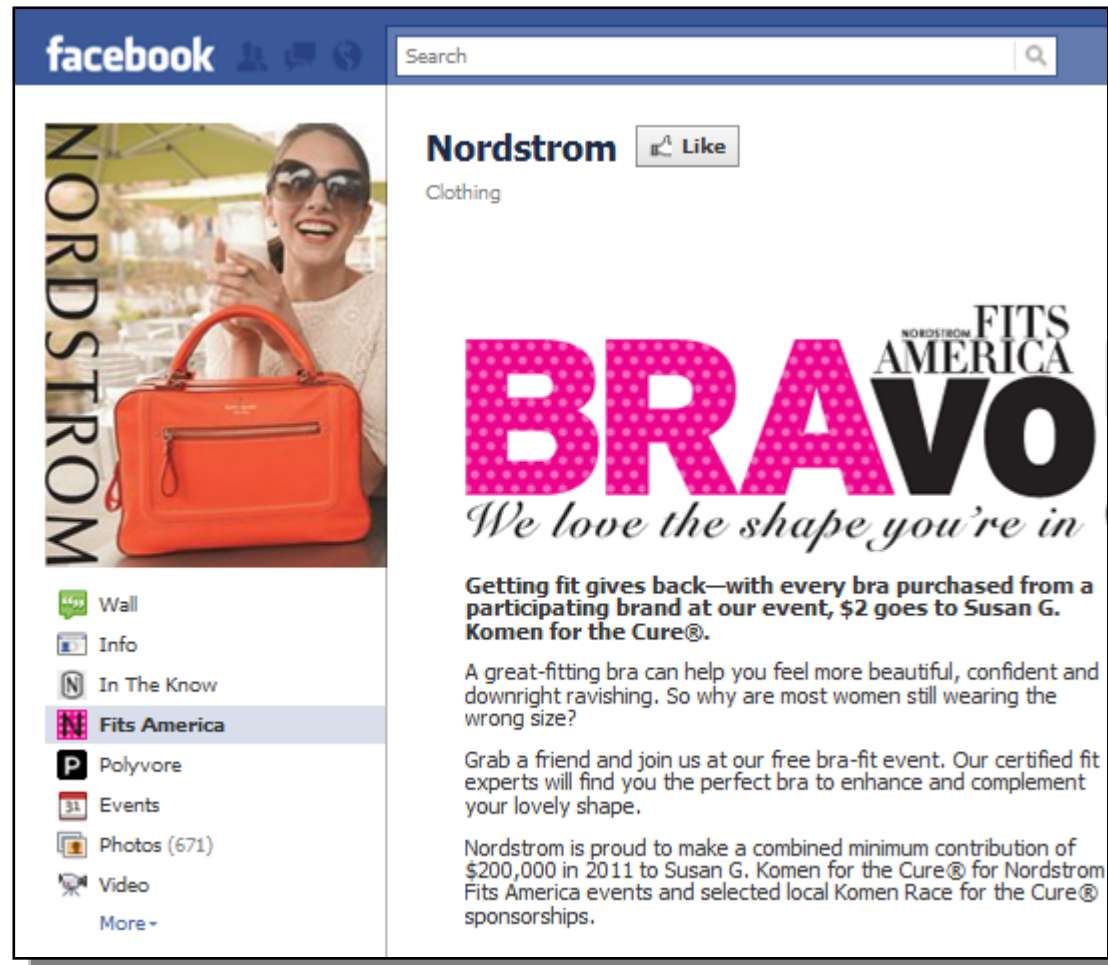
REI  **REI** Did your city make the list for Best Cities to Raise an [#Outdoor #Kid?](#) @BackpackerMag & @OutdoorNation <http://bit.ly/jHWbY6>
2 hours ago

REI  **REI** Showing he's more than just an eater of odd bits: [#BearGrylls](#) shares his love of [#running](#). <http://bit.ly/mbzDC5>
5 hours ago

REI  **REI** [#Sotellmewhy](#) you like sunny days?
6 hours ago

REI  **REI** Show your mad skills! @TheBanffCentre Comp is taking submissions! Let us know if you submit & we'll play your [#film!](#) <http://bit.ly/mqtIFa>
20 hours ago

Employer-Sponsored Social Media



The image is a screenshot of a Facebook post from the Nordstrom page. The post features a vertical banner on the left with the word 'NORDSTROM' and a photo of a woman in sunglasses holding a bright orange handbag. The main content of the post is a promotional message for a 'BRAVO' event. The word 'BRAVO' is written in large, stylized letters, with 'BRA' in pink with white polka dots and 'VO' in black. Above 'BRAVO' is the text 'NORDSTROM FITS AMERICA'. Below the main title is the slogan 'We love the shape you're in'. The post text explains that for every bra purchased from a participating brand at the event, \$2 goes to Susan G. Komen for the Cure. It also describes the event as a free bra-fit session where certified experts help women find the perfect bra. At the bottom, it states that Nordstrom is contributing a minimum of \$200,000 to the cause in 2011.

facebook

Search

Nordstrom Like

Clothing

BRAVO NORDSTROM FITS AMERICA

We love the shape you're in

Getting fit gives back—with every bra purchased from a participating brand at our event, \$2 goes to Susan G. Komen for the Cure®.

A great-fitting bra can help you feel more beautiful, confident and downright ravishing. So why are most women still wearing the wrong size?

Grab a friend and join us at our free bra-fit event. Our certified fit experts will find you the perfect bra to enhance and complement your lovely shape.

Nordstrom is proud to make a combined minimum contribution of \$200,000 in 2011 to Susan G. Komen for the Cure® for Nordstrom Fits America events and selected local Komen Race for the Cure® sponsorships.

Wall

Info

In The Know

Fits America

Polyvore

Events

Photos (671)

Video

More

Why **Employers** Sponsor Social Media

- Advertising
- PR
- Customer relations
- Market research
- Investigate vendors, suppliers, service providers
- Involve employees as company proselytizers
- Investigate employees and candidates for employment

Risks of **Employer**-Sponsored Social Media

- Lack of control
- Differences in message among employees
- Exposure to securities laws
- Risk libel allegations from competitors
- Employee misconduct
- Violation of confidentiality obligations, IP rights
- Litigation holds
- Public records retention

Workplace Social Media Gone **WRONG!**



Managing Employer-Sponsored Social Media

- **Draft** a CLEAR policy
- **Designate** eligible staff – *but no discrimination*
- **Discipline** for unapproved or improper use
- **Review** and revise posts – *no privacy rights*

Using Social Media During **Recruiting**



Using **Social Media** In Recruiting/Hiring



- Effective tool – *learn more*
- Can reveal:
 - Poor work ethic, poor writing/communication skills, negative work history, bad judgment

Social Media Gone **WRONG!**

Put some music on. The new iPod shuffle Find out more >

Web Search powered by Google

Home | Browse | Search | Invite | Film | Mail | Blog | Favourites | Forum | Groups | Events | Videos | Music | Comedy | Classifieds

"The Bishop"
Male
37 years old
Ipswich, Suffolk
United Kingdom
Last Login: 27/10/2006
View My: [Pics](#) | [Videos](#)

The Stoner Emporium

Bob's Latest Blog Entry
[View All Blog Entries]

About me:
Well here I am trying to make the laptop work & I've ended up here.

Who I'd like to meet:
Goddoh

Bob has 7 friends

Lizz Rain hillary Jordan
Sebastian Tom

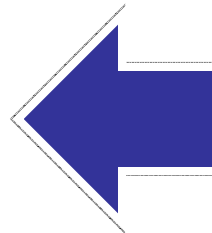
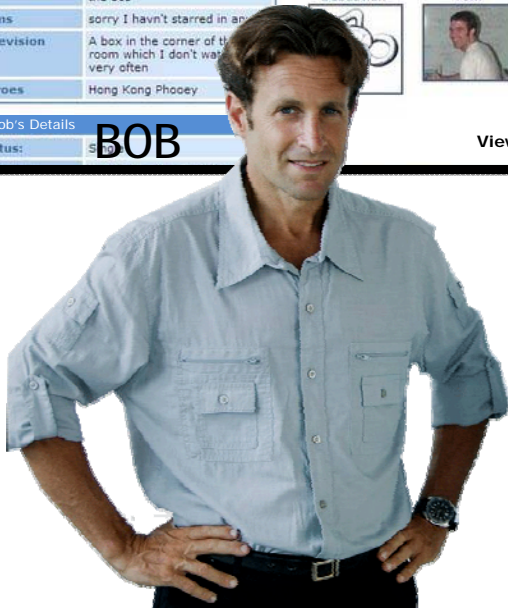
Bob's Interests

General	Keeping fit, most types of day/night out
Music	most types especially from the 80s
Films	sorry I haven't starred in an
Television	A box in the corner of the room which I don't watch very often
Heroes	Hong Kong Phooey

Bob's Details
Status: **BOB**

[View All of Bob's Friends](#)

myspace.com



Social Media Gone **WRONG!**

“Cisco just **offered** me a job!
Now I have to weigh the utility
of a **fatty paycheck** against the
daily commute to San Jose and
hating the work.”



“**Who** is the hiring manager?
I'm sure they would love to
know that you will hate the
work. **We here** at Cisco are
versed in the Web.”



RISKS of Using Social Media During Recruitment/Hiring

- May be **negligent** not to check
- But may yield **too much** information
- **Protected** status (*ethnic background, pregnancy, religious beliefs, union affiliation*)
- **Lead to claims** – *either failure to hire or bias after hire*
- **Privacy claims** – *varies by state, and watch for public employer duties*

Reducing the Risk

- Treat all applicants **consistently**
- Create **list** of sites to search
- **Identify** target list of lawful information about applicants to be generated by search
- **Designated employee** – **not hiring manager**
 - conducts the search and filters out protected information
- Base hiring decisions on **legitimate** reasons
 - *and document it!*

Employee Recommendations

- Reference check policy should **limit** online posts (*e.g., LinkedIn recommendations*)
- Consider **prohibiting** social media “recommendations” without prior approval from HR
- Should be **consistent** with existing Company reference check policy
- **Communicate** with managers

A blue cartoon bird with a yellow beak and feet stands on a wooden stage. The stage is framed by a grey archway with red curtains. A speech bubble points to the bird from the right. The background is a dark grey wall.

PART 3:

Off-Duty Use of
Social Media

Why You **SHOULD** Care

- Unauthorized **release** of confidential information re operations, R&D, customers
- **Publicity** about layoffs, terminations, other personnel issues
- Negative **PR**
- **Securities** laws (*misrepresentations*)
- **Libel**
- Failure to follow endorsement **guidelines**

Off-Duty Social Media Gone **WRONG!**



@jprussell
jprussell

Chick **at work** just got fired for getting hammered **drunk at 1030 AM**. Stay classy!

Off-Duty Social Media Gone **WRONG!**



its sad i gotta get high or **drunk** before i
go to **work** just to deal with the @#!>”^
at my job.

Off-Duty Social Media Gone **WRONG!**



Twitter
@

Cleaning the bitch off this gym my boss
better be happy or I'm beating him to
death with a mop **#ihatemyboss**

3 May via **Twitter for BlackBerry®**

Social Media Opens the Door to **Harassment**

- Referenced through off-duty social media posts
- Harasser may use social media to harass
- Employer duty to respond if knows or should have known of harassment
- Consider updating harassment policy to reflect social media issues

Off-Duty Social Media Gone **WRONG!**



[Blurred text]

Oh i get why u kept asking me if you had
1250 FMLA hours you planned on calling
out fsick for 2 months starting today.

#Loser #NFTC

30 Mar via web

Off-Duty Social Media Gone **WRONG!**

First shift since I started at @#!>”^
that I didnt get hit on or offered sex by a
coworker.. #sicklifeilive #ihatemyjob

about 18 hours ago via web



[REDACTED]
[REDACTED]

Social Media Creates **HIPAA** Violations

- **Disclosure** of confidential patient information (*or information enabling others to identify the patient*)
- **Bad PR:** Inadvertent disclosure of patient deaths or medical mistakes
- **Liability:** Social media used in trials to demonstrate negligence, negligent hiring or retention

Off-Duty Social Media Gone **WRONG!**



there are times I feel defeated at work.
Today was one of those days. Both my
patients died. : (

Social Media Opens the Door to **Disparagement**

- Non-professional speech
 - May assume communication is “private”
 - Text-speak, slang, and provocative imagery
 - Blowing off steam
- Co-workers, managers, clients, patients may all be free game

Off-Duty Social Media Gone **WRONG!**



Saw a CW eating, w/ a couple of napkins tucked into his collar, what made me laugh was he had spills evrywhere on it.
Are u 5? #GROSS #NFTC

6 May via web

Social Media Creates **Awkward Management Issues**

Teshan posted a FB status last night going, 'I hate my job! It's not fun anymore' and our boss commented on it. Sooo awkward ahaha.

about 7 hours ago via web



Jeffrey [unreadable]
[unreadable]

Watch Out for **Section 7**

- **Right of employees** to engage in protected concerted activity
- Social media posts **may qualify**
- **Covers** union and non-union employers
- **NLRB** oversight and increasing activity
- When does monitoring of social media become **unlawful surveillance?**



Watch Out for **Section 7**

Regional News: Build.com settles charge of unlawful discharge for comments posted on Facebook with NLRB agreement in San

The former employee filed a charge with the NLRB on February 28, 2011, alleging that she was terminated in retaliation for having posted the comments about build.com and possible state labor code violations, which drew responses from other employees who were “Facebook friends” of the charging party. Under the National Labor Relations Act, employees have the right to discuss wages and other conditions of work with their co-workers. The employees in this case were not represented by a union.

Social Media and **Cyberstalking**

- Fellow employees or **outside** the employer
- Employer could be **directly liable** and vicariously liable
- Once employer knows or should have known about the harassment or stalking, employer has **obligation to respond**

Impact of Social Media on **Privacy Rights**


- **Balance** privacy concerns with business requirements
- **Too much involvement** may prompt claim for invasion of privacy
- **WA lawsuit** for violating right to privacy;
recover for injuries to business, person or reputation
- **Too little involvement** may prompt negligent hiring/negligent retention claim

Off-Duty Social Media **Basic Rules**

- Employees may use social media during **non-work hours** using personal resources
- Employer's interests arise when employee's association with the employer is **"identified, known, or presumed."**

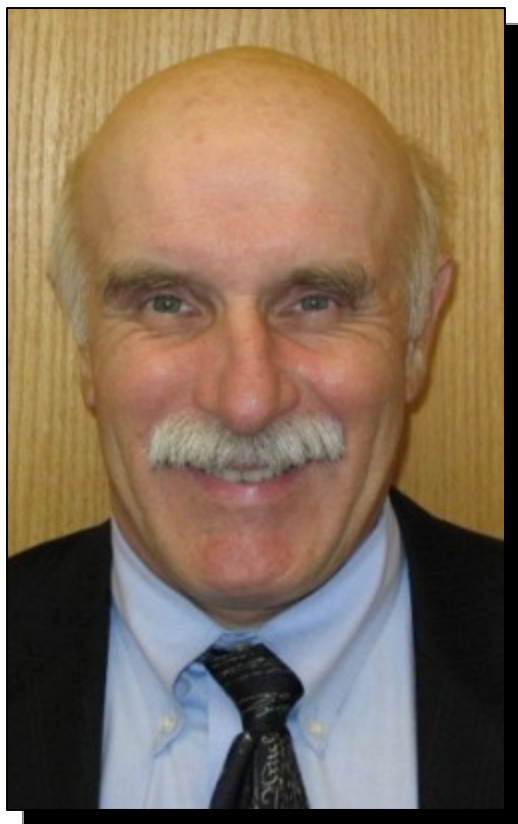
Remember This

- **Bottom line:** employer has a duty to respond when knows or should have known about harassment or other risks
- Employer **should** investigate and possibly discipline for off-duty conduct that violates workplace policies
- But **beware** of protected concerted activity
- **Follow** the policy

A blue cartoon bird with a yellow beak and feet stands on a wooden stage. The stage is framed by a grey archway and red curtains. A speech bubble points to the bird, containing the text 'PART 4: Public Employer Concerns'. The background is dark, and the stage floor has several small yellow lights.

PART 4:
Public Employer
Concerns

Are Social Media Posts **Public Records**?



Jerry Handfield
WA State Archivist

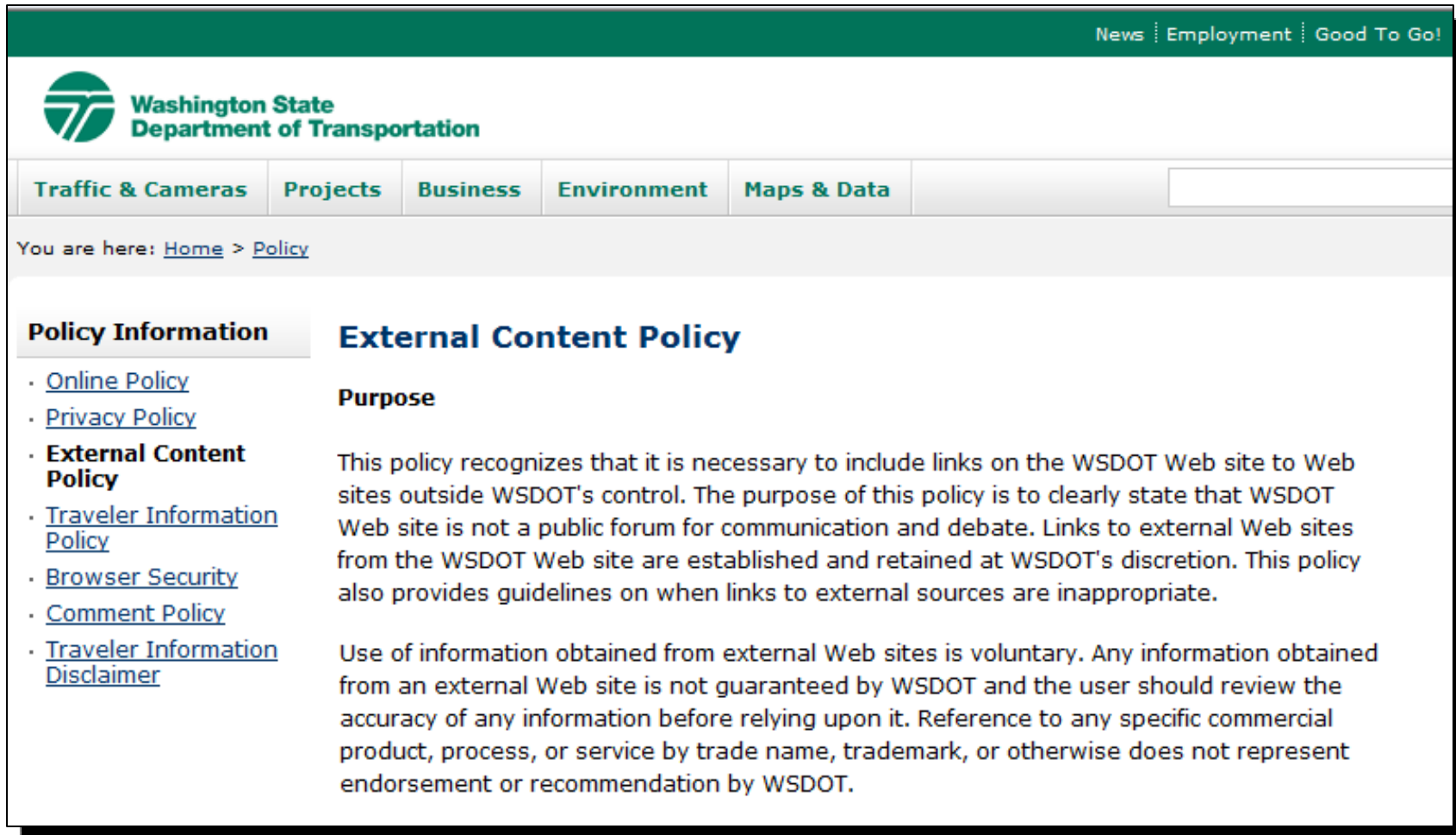
"If the posts are made or received in connection with the **transaction of the agency's public business** (*such as providing advice or receiving comments about the agency, its programs, core business, etc.*), then **they are public records** for the purposes of records retention and need to be retained for their minimum retention periods."

Constitutional Issues to Social Media?

From deputy attorney general in Indiana:
“Use live ammunition” against “political enemies” & “thugs”



1st Amendment & External Content Policy



The screenshot shows the Washington State Department of Transportation website. At the top right, there are links for "News", "Employment", and "Good To Go!". The logo for the Washington State Department of Transportation is on the left. Below the logo is a navigation menu with tabs for "Traffic & Cameras", "Projects", "Business", "Environment", and "Maps & Data". A search box is located to the right of these tabs. Below the navigation menu, there is a breadcrumb trail: "You are here: [Home](#) > [Policy](#)". The main content area is divided into two columns. The left column is titled "Policy Information" and contains a list of links: [Online Policy](#), [Privacy Policy](#), [External Content Policy](#), [Traveler Information Policy](#), [Browser Security](#), [Comment Policy](#), and [Traveler Information Disclaimer](#). The right column is titled "External Content Policy" and contains the following text:

Purpose

This policy recognizes that it is necessary to include links on the WSDOT Web site to Web sites outside WSDOT's control. The purpose of this policy is to clearly state that WSDOT Web site is not a public forum for communication and debate. Links to external Web sites from the WSDOT Web site are established and retained at WSDOT's discretion. This policy also provides guidelines on when links to external sources are inappropriate.

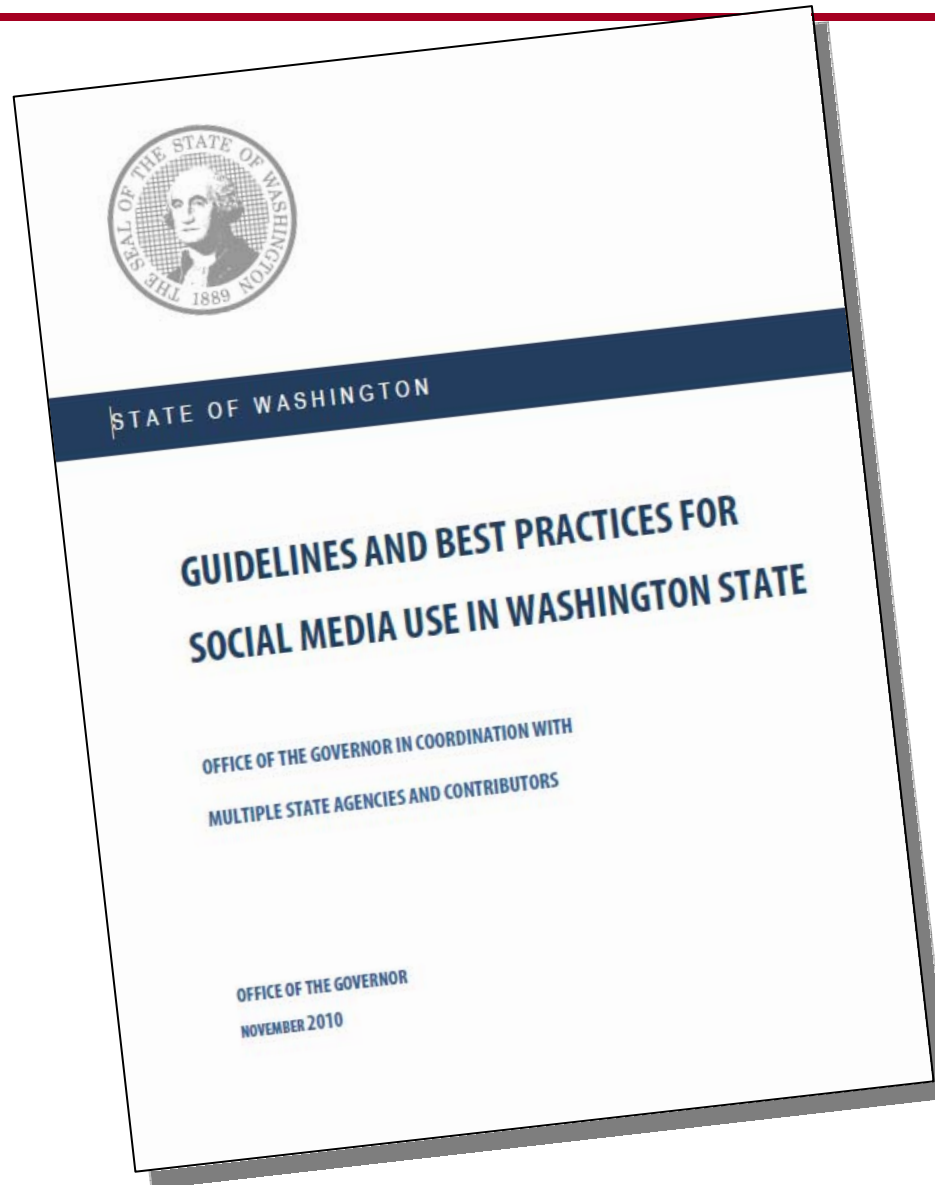
Use of information obtained from external Web sites is voluntary. Any information obtained from an external Web site is not guaranteed by WSDOT and the user should review the accuracy of any information before relying upon it. Reference to any specific commercial product, process, or service by trade name, trademark, or otherwise does not represent endorsement or recommendation by WSDOT.

SOURCE: <http://www.wsdot.wa.gov/Policy/content.htm>

DOT Forbids Social Media That . . .

- Exhibits **hate, bias, discrimination, pornography, libelous or otherwise defamatory** content;
- Promotes **alcohol, tobacco, or illegal** drugs;
- Lobbies or advocates for a **particular industry, organization or enterprise** (including non-profits);
- Promotes or supplies adult or **sexually oriented** materials;
- Promotes, opposes, or makes available **weapons or gambling**;
- Advocates for or against a **candidate or ballot** proposition.
- Contains **misleading or unsubstantiated** claims.

WA State Offers Important **Guidelines** on Social Media



4th Amendment Issues of Privacy



City of Ontario [CA] v. Quon

Right to Be Forgotten?

EU to force social network sites to enhance privacy

'Right to be forgotten' would ensure users of Facebook and other sites could completely erase personal data

Leigh Phillips in Brussels
guardian.co.uk, Wednesday 16 March 2011 17:38 GMT

A [larger](#) | [smaller](#)



The EU intends to force Facebook and other social networking sites to make high standards of privacy the default setting. Photograph: Leon Neal/AFP

The European Union is to enshrine a "right to be forgotten online" to ensure that, among other things, prospective employers cannot find old Facebook party photos of someone wearing nothing but a lampshade.

In a speech to the European parliament, the EU justice commissioner, Viviane Reding, warned companies such as Facebook that: "A US-based social network company that has millions of active users in Europe needs to comply with EU rules."

"Right to be forgotten online" designed so

"prospective employers cannot find old Facebook party photos of someone wearing nothing but a lampshade."

Companies not **"exempt** just because they have their servers in California... If they're targeting EU citizens, they will have to **comply with the rules.**"

A blue cartoon bird with a yellow beak and feet stands on a wooden stage. The stage is framed by a grey archway and red curtains. A speech bubble points to the bird. The background is dark grey.

PART 5:

Social Media
Policy

Social Media Policy Basics

- **Define** or describe social media
- **Address** business use
- **Warn** that social media not private
- **Suggest** care and discretion
- **Require** compliance with the law/rights of others
- **Protect** confidential information and images
- **Prohibit** false information
- **Warn** employees that misuse of social media may result in discipline

Social Media Policy Basics

- Address **BUSINESS** use
- **Warn** that employer controls access and content
- **Describe** process for posting/permissions
- **Direct** requests for comment
- **Require** identification with employer

SURVIVOR

OUTLAST

TM

Social Media Policy Basics

- Address **PERSONAL** use
- **Limit** to off-duty time and own equipment/Internet access
- **Restrict** to personal email accounts
- **Require** disclaimer when discussing employer
“The views expressed on this page are my own and do not reflect the views of my employer.”
- **Remind** employees that they are responsible for content
- **Prohibit** negative conduct that might damage employer’s reputation, business or mission

Implementing the Policy

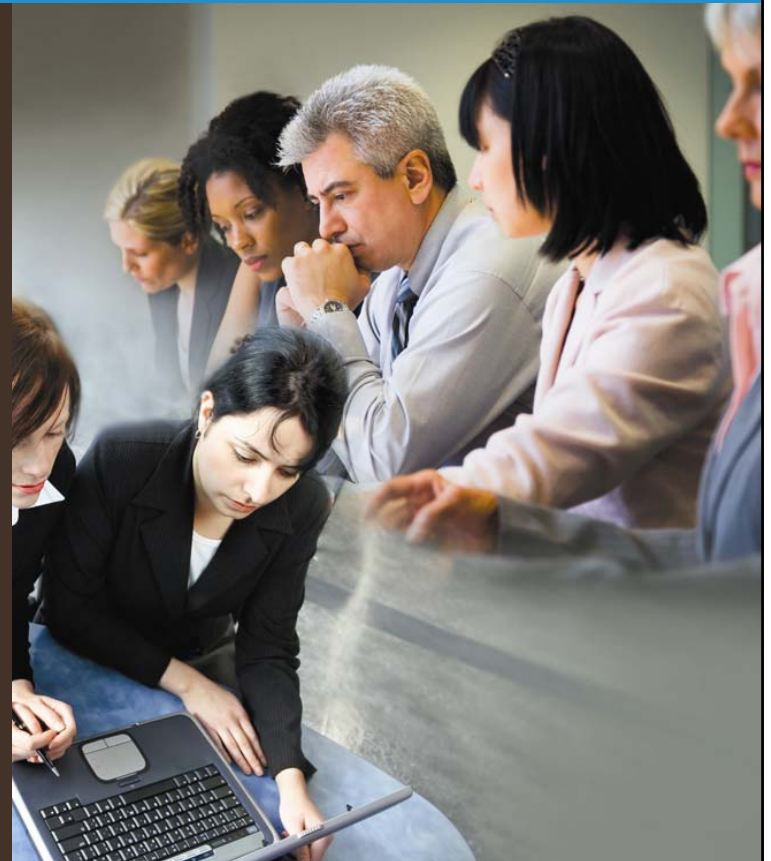
- **Train** all supervisors and HR staff
- **Distribute** to employees and get acknowledgement
- **Enforce** policy in a uniform manner
- **Be aware** of protected concerted activity and privacy claims
- **Update** policy with advances in social media



FOSTER PEPPER PLLC

Managing Social Media Employment Issues

May 10, 2011



Speaker Bios

Presented by:





Steven R. Peltin

E-mail: pelts@foster.com

Tel: 206-447-6215 / Seattle

Fax: 206-749-2094

Practices

Employment and Labor Relations CHAIR

Industries

Emerging Companies and Venture Capital

Practice Summary

Steve's practice covers the gamut of employment and labor law. His advice practice is dedicated to helping employers solve problems such as employee discipline and discharge, leaves of absence, discrimination and harassment claims, and threats of employee violence. Steve enhances employee handbooks and prepares and negotiates employment, confidentiality and non-compete agreements. He also counsels executives and professionals on employment and separation agreements, and assists with corporate transactions such as purchases and sales of businesses.

On the litigation side, Steve represents public and private employers in lawsuits claiming discrimination, harassment, wrongful discharge and violations of wage and hour, employee benefits, trade secrets and non-compete obligations. He also appears before local, state and federal administrative agencies and arbitrators in employment and labor matters.

Experience

Foster Pepper PLLC
Member, 2010-Present

K&L Gates LLP
Partner, 1998-2010

Georgia-Pacific Corporation
Senior Counsel, 1996-1998

Alzheimer & Gray, Chicago, IL
Partner, 1986-1996

Isham Lincoln & Beale, Chicago, IL
Associate, 1983-1986

U.S. District Court for the Western District of Wisconsin
Law Clerk for Hon. John C. Shabaz, 1982-1983

Bar Admissions

Washington, 1999

Illinois, 1983

Representative Cases

Won a jury trial for an employer accused of age discrimination by laid-off union employee.

Prevailed in a hearing before the United States Department of Labor brought by a union business agent who claimed that the company conspired with the union to discharge him.

Co-counsel in class action claiming pay for commuting in company vehicle; certification defeated and individual claim resolved promptly.

Co-counsel for large employers in two US Department of Labor collective actions claiming that employees worked off the clock; summary judgment obtained in one case, and the other was settled favorably.

Won summary judgment on discrimination / harassment claim for financial services company.

Obtained temporary restraining orders in two cases where employees removed and refused to return computerized documents and information.

Won summary judgment on sex bias claim by male employee of performing arts client.

Convinced OSHA that a safety whistleblower on a construction site was not subject to a hostile work environment.

Obtained anti-harassment orders against former employees.

Defended company in ERISA case brought by former executive seeking payments under a Supplemental Executive Retirement Plan.

Representative Transactions

Employment and labor counsel in sales of business, including drafting of purchase agreement language, preparation of offer letters, executive employment agreements and employee communications.

Assistance to client in reductions in force.

Counseling of clients facing threat of workplace violence.

Creation of documentation for background investigations, hiring, leaves of absence, requests for disability accommodation, last chance agreement and severance agreements.

Preparation on policies such as travel pay, use of cell phones and blogging.

Management training on employment law topics, including avoiding harassment and discrimination, performance management and hiring.

Activities

Seattle Theatre Group
Board of Directors
Executive Committee

University Preparatory Academy
Chair of Personnel Committee

Publications

Steve Peltin is a contributor to Foster Pepper's Washington Workplace Law blog.

Check out the latest news in this fast-changing area at: www.washingtonworkplacelaw.com.

Bad Acts: Smaller Employers Should Confront Threats of On-The-Job Physical Assaults

Author, *Washington Journal*

Telecommuting: Legal and Management Risks For Employers

Author, *Corporate Counsel Magazine*

Reducing Telecommuting Management Risks

Author, *National Underwriter Magazine*

How To Reduce Workplace Violence

Author, *National Underwriter Magazine*

Whose Workforce Is It Anyway? The Worker Adjustment and Retraining Act in the M&A Context

Author, *Preston Gates & Ellis LLP E-Alert*

50-State Survey of Employment Libel and Privacy Law, Washington Chapter

Author, *Media Law & Resource Center*

Hiring Employees: Disability Questions and Medical Exams

Author, *Realty & Building*

Workplace Sexual Harassment

Author, *Realty & Building*

Department of Labor Expands FMLA Leave Rights for Non-traditional Families

Author, *K&L Gates Labor and Employment Alert*

Your Office Away from the Office

Quoted in *Utah CEO Magazine*

Keeping violent employees out of the workplace

Quoted in *Risk Management Magazine*

10 Considerations in Developing Telecommuting Policies and Agreements

Quoted in HR.COM - July 1, 2005

Presentations

Payroll Management

Speaker, Lorman Educational Services

Time Off: State and Federal Laws on Employee Leave, Vacations and Holidays

Speaker, Lorman Educational Services

When Hand Washing is Not Enough: Legal Challenges Presented By the Flu Pandemic

Speaker, K&L Gates Breakfast briefing

Recent Developments under the Family and Medical Leave Act

Speaker, National Council of State Housing Agencies

10 Scary Issues You Need to Know About Your Employees

Speaker, ASTRA Women's Business Alliance

New Developments in Employment Law
Speaker, Seattle CFO Arts Roundtable

Best Practice in FMLA Administration
Speaker, Council on Education in Management

Conducting Effective Investigations Into Employee Complaints
Speaker, PUD and Municipal Attorneys Association

Cyberstalking: The Washington Employer's Perspective
Speaker, King County Bar Association

Blowing the Whistle: Policies & Procures under Sarbanes-Oxley
Speaker, Preston Gates & Ellis LLP Breakfast Briefing

Workplace Investigations
Speaker, Council on Education in Management

Email and the Internet – Legal Challenges for Employers
Speaker, PUD and Municipal Attorneys Association

Minimizing Risks When Upsizing, Downsizing, and Using Alternative Work Arrangements
Speaker, Preston Gates & Ellis LLP Breakfast Briefing

Negligent Hiring Liability, Pre-Hire Investigations and the Fair Credit Reporting Act
Speaker, Preston Gates & Ellis LLP Breakfast Briefing

Education

Cornell Law School, J.D., *cum laude*, 1983

University of Wisconsin-Madison, B.A., *with distinction*, 1978
Phi Beta Kappa

Personal / Interests

Raised in Milwaukee, Wisconsin

Investor and part-time employee in *Nena*, Steve's wife's gift and vintage shop in Seattle's Madrona neighborhood

Enthusiastic traveler, dog owner, and poker player



P. Stephen DiJulio

E-mail: dijup@foster.com

Tel: 206-447-8971 / Seattle

Fax: 206-749-1927

Practices

Municipal Government
Land Use
Litigation and Dispute Resolution
Employment and Labor Relations
Environmental
Real Estate

Industries

Right-of-Way CHAIR
Energy and Utilities
Infrastructure
Construction
Education and Schools
Sustainable Development / Green Building
Transportation Industries
Sports and Sports Facility

Practice Summary

Areas of Concentration:

Appellate Team
Condemnation and Eminent Domain
Design-Build
Public Disclosure Team
Real Estate Litigation
School Law

Steve's practice focuses on litigation involving state and local governments; civil service and public employment; and, land use and environmental law. His particular experience includes representation of jurisdictions on eminent domain, utilities (water, wastewater, storm water, solid waste systems), local improvement districts, facility siting and contractor litigation.

Experience

Foster Pepper PLLC
Member, 1990-Present
Associate, 1986-1990

City of Kent - Kent, Washington
City Attorney, 1982-1986

City of Seattle - Seattle, Washington
Assistant City Attorney, 1977-1982

Bar Admissions

United States District Court, Eastern District of Washington, 1993

United States Court of Appeals for the Ninth Circuit, 1980

Supreme Court, State of Washington, 1976

United States District Court, Western District of Washington, 1976

Representative Cases

Brower v. State/Football Northwest

137 Wn.2d 44, 969 P.2d 42 (1998) (Successful defense of public-private stadium project and legislative referendum).

Central Puget Sound Regional Transit Authority v. Miller

156 Wn.2d 403, 128 P.3d 588 (2006) (successful defense of Sound Transit eminent domain action)

HTK v. Seattle Popular Monorail

155 Wn.2d 612, 121 P.3d 1166 (2005) (successful defense of municipal condemnation authority)

Servais v. Port of Bellingham

127 Wn.2d 820, __ P.2d __ (1995) (amicus for Washington Public Ports Association in defense of protected public records).

Klickitat Citizens v. Klickitat County

122 Wn.2d 619, 860 P.2d 390 (1993) (Defense of comprehensive plan and environmental impact statement).

Rabanco v. King County

125 Wn.App. 794, 106 P.3d 802 (2005) (successful defense of county solid waste management authority)

Wong, et al. v. City of Long Beach

119 Wn. App. 628, 82 P.3d 259 (2004) rev. denied 152 Wn.2d 1015 (2004) (successful defense of city trail project)

Washington Waste Systems, Inc. v. Clark County

115 Wn.2d 74, 794 P.2d 508 (1990) (Defense of multi-million dollar government contract procurement).

Barnier v. City of Kent

44 Wn. App. 868, 723 P.2d 1167 (1986) (Defense of development assessment process).

Tiffany Family Trust v. City of Kent

119 Wn. App 262, 77 P.3d 354 (2003); affirmed 155 Wash.2d 225, 119 P.3d 325 (2005) (successful defense of assessments and rejection of civil rights claims)

Grant County Fire District No. 5 v. Moses Lake

Supreme Court, 150 Wn.2d 791, 83 P.3d 419 (2004) (Court reconsiders and unanimously reverses earlier ruling; affirms city annexation authority)

Jensen v. Torr

44 Wn. App. 207, 721 P.2d 992 (1986) (Defense of government permit process and immunity of government officials).

Prater v. City of Kent

40 Wn. App. 639, 699 P.2d 1248 (1985) (Defense of claims of discrimination in employment).

Babcock v. Mason County Fire Dist. No. 6

144 Wn.2d 774, 30 P.3d 1261 (2001) (amicus for Fire Commissioners Association regarding public duty doctrine)

Little Deli Marts, Inc. v. City of Kent

108 Wn. App. 1, 32 P.3d 286 (2001); 107 Wash. App. 1011 (2001) rev. denied 145 Wn.2d 1030 (2002) (successful defense of local improvement district process)

City of Seattle v. Auto Sheet Metal Workers Local 387

27 Wn. App. 669, 620 P.2d 119 (1980) (Defense of City charter and personnel system reorganization).

Leonard v. Civil Service Commission of City of Seattle

25 Wn. App. 699, 611 P.2d 1290 (1980) (Judicial review of administrative proceedings).

Silver Firs Town Homes, Inc. v. Silver Lake Water Dist.

103 Wn. App. 411, 12 P.3d 1022 (2000) rev. denied 143 Wn.2d 1013 (2001) (successful defense of connection charges)

Petersen v. City of Seattle

21 Wn. App. 108, 583 P.2d 1259 (1978) (Constitutionality of reckless driving laws upheld).

City of Seattle v. Platt

19 Wn. App. 904, 578 P.2d 873 (1978) (Prosecution and public record defense in criminal proceedings).

City of Seattle v. Shepherd

93 Wn.2d 861, 613 P.2d 1158 (1980) (upholding crime victims' rights to recovery of stolen property)

Activities

Municipal League

Board of Trustees, 2010-Present

Washington State Association of Municipal Attorneys

International Municipal Lawyers Association

American Bar Association

Member, State and Local Government Law and Labor and Employment Law Sections

Washington State Bar Association

Member, Environmental and Land Use Law and Administrative Law Sections

Member, Amicus Brief Committee

Featured in 2009 Foster Pepper Pro Bono Annual Report

Pro Bono in Action - Advocating for Victim's Rights

King County Bar Association

Trustee, 1986-1989

South King County Bar Association

Trustee, 1986-1988

South King County Legal Clinic
Attorney Coordinator, 1985-1986
Volunteer, 1978-1989

University of Washington
Lecturer /Affiliate Professor, Evans Graduate School of Public Affairs
Winter Quarter 2001, "The Law of Public Administration"

Publications

Steve DiJulio is a contributor to Foster Pepper's Local Open Government Blog.
Check out the latest news in this fast-changing area at: <http://www.localopengovernment.com>.

2011 Washington Real Property Deskbook: Causes of Action, Taxation, Regulation
Editor

Council Meeting Conduct and Citizen Rights under the First Amendment
Author, Municipal Research and Services Center of Washington - November 2009

News

Breaking Down Freedom of Information Laws
The Willis Report, FOX Business News - July 29, 2010

Honors & Awards

2010 Top Lawyer, *Seattle Metropolitan* magazine
Washington Super Lawyers®, 2002-2010
Martindale-Hubbell AV rating

Education

Seattle University, J.D., 1976
University of Washington, B.A., 1973 (Oval Club Scholastic Honorary)



Kathryn (Katie) C. Carder

E-mail: cardk@foster.com

Tel: 206-447-2880 / Seattle

Fax: 206-749-1911

Practices

Litigation and Dispute Resolution
Employment and Labor Relations

Industries

Retail

Practice Summary

Areas of Concentration:

Appellate Team
Municipal/Political Law
Public Disclosure Team

Katie's practice is concentrated in Litigation and Dispute Resolution, with a focus in Employment and Labor, Municipal, and Public Records law. Katie has experience in both federal and state courts defending employers and managers in employment litigation involving claims for violation of federal and state anti-discrimination laws, wrongful discharge in violation of public policy, and emotional distress claims.

Experience

Foster Pepper PLLC
Associate, 2006-Present
Summer Associate, 2005

Lane County Legal Aid - Eugene, OR
Legal Extern, 2005

Oregon Department of Justice, Trial Division - Salem, OR
Law Clerk, 2004-2005

Bar Admissions

Washington, 2006
Admitted to practice

Activities

Washington State Bar Association

Featured in 2010 Foster Pepper Pro Bono Annual Report
KCBA Housing Justice Project

Featured in 2009 Foster Pepper Pro Bono Annual Report
Helping Secure Land Rights for the World's Poorest - Bangladesh

Foster Pepper Pro Bono
Featured in 2006 Foster Pepper Pro Bono Annual Report

Rural Development Institute
International Women's Day Luncheon, Host Committee

Star Guild, Children's Hospital Guild Association
Event Chair, Season of Light Auction

Presentations

Compensation Issues under FLSA/Wage and Hour
Speaker, Fundamentals of Employment Law, Seattle, WA - June 2010

Honors & Awards

Oregon Law Review
Editor, 2004-2006

Dean's Award of Excellence Scholarship
2003-2006

Education

University of Oregon School of Law, J.D., 2006
Graduate Teaching Assistant, University of Oregon President Dave Frohnmayer, 2006
Constitutional Law Tutor, Professor John Bonine, 2005

University of Washington
B.A. Political Science, 2003
B.A. Business Administration, 2003

Personal / Interests

Interests include traveling, practicing yoga, learning to cook, and watching Husky Sports.

Born in Santa Ana, CA



Janelle Milodragovich

E-mail: miloj@foster.com

Tel: 206-447-6220 / Seattle

Fax: 206-749-2120

Practices

Litigation and Dispute Resolution
Employment and Labor Relations
Business

Industries

Transportation Industries
Arts and Entertainment

Practice Summary

Ms. Milodragovich advises and represents all types of employers in a broad range of labor and employment law matters, including union avoidance, wage and hour disputes, discrimination complaints, progressive discipline issues, and employee terminations. She represents corporations and small business in union negotiations, organizing campaigns, elections and labor arbitrations. Ms. Milodragovich's practice also includes representing clients in unfair labor practice proceedings and 10j actions before the National Labor Relations Board and related administrative agencies.

In addition to her traditional labor experience, Ms. Milodragovich has significant experience defending employers of all sizes in employment litigation involving claims of disability and employment discrimination, wrongful termination, and wage and hour class actions. She has extensive California litigation experience, including representing employers in California state administrative proceedings. Ms. Milodragovich works closely with Human Resource professionals to ensure clients' compliance with applicable state and federal labor laws, as well as other statutory and contractual obligations. She also serves as Publisher of Foster Pepper's Washington Workplace Law blog: www.washingtonworkplacelaw.com.

Prior to law school, Ms. Milodragovich worked as a Human Resources Generalist for a multi-state education company.

Experience

Foster Pepper PLLC
Associate, 2010-Present

Littler Mendelson, PC - San Francisco, CA
Associate, 2005-2010

Office of the Washington State Attorney General, Ecology Division - Olympia, WA
Clerk, June-September 2004

Office of the Washington State Attorney General, UW Division - Seattle, WA
Clerk, June 2003-June 2004; September-December 2004

Bar Admissions

Washington, 2010

California, 2005

U.S. District Courts for the Northern and Central Districts of California

Ninth Circuit Appellate Court

Activities

California Bar Association

San Francisco Bar Association

Serbian Bar Association of America

Publications

Janelle Milodragovich is a contributor to Foster Pepper's Washington Workplace Law blog.
Check out the latest news in this fast-changing area at: www.washingtonworkplacelaw.com.

Education

University of Washington School of Law, J.D., 2005

Washington State University, B.A.

Selected by Governor Gary Locke as first Student Regent, 1998-1999

Student Speaker, WSU Commencement, 1999

Speaker Materials

Presented by:



SOCIAL MEDIA

This policy applies to social media use by employees for work-related purposes and personal use of social media when the employee's affiliation with Employer is identified, known, or presumed. Social media includes but is not limited to posting in online forums, blogs, microblogs, wikis and vlogs (e.g., Facebook, LinkedIn, MySpace, YouTube, Twitter, media sites or similar types of online forums). This policy does not apply to an employee's personal use of social media where the employee's association with Employer is not directly or indirectly disclosed or acknowledged, where the employee engages in the activity using his or her own equipment, away from work and not on work time, AND where the posting does not relate to Employer.

This policy is divided into three subsections: (1) general use of social media; (2) work-related use of social media; and (3) personal use of social media. Violation of this policy may lead to disciplinary action up to and including termination of employment.

General Use of Social Media. Remember that social media posts are not private. Everything you post online builds a record about you and your activities. When disclosing information on social media sites, consider the impact that those comments will have on you and Employer when read by coworkers, family members, and [clients, customers, suppliers, constituents, patients, community members].

All work-related use of social media and personal use of social media when your association with Employer is identified, known, or presumed shall be conducted consistent with the following:

You must comply with all Employer policies, rules, and guidelines, including the employee handbook.

All Employer confidentiality rules apply to social media posts. Never post information that could be used directly or indirectly to identify [employees, clients, customers, suppliers, constituents, patients, community members]. Never post confidential Employer information.

Posts shall comply with all state and federal laws, including those relating to copyright and information protection.

Never refer to, describe or post pictures, videos, or other representations of employees or others without their permission.

Always be respectful and professional to [employees, clients, customers, suppliers, constituents, patients, and community members] and others.

Do not post any material that is obscene, profane, libelous, threatening, harassing, abusive, hateful or embarrassing to another person or entity.

Work-Related Use of Social Media. HR or _____ will administer and oversee social media activity conducted on behalf of Employer. Some staff may be interested in participating in social media for work-related purposes, while other employees may be asked by HR or _____ to use social media to support Employer's objectives. All employee use of social media for work-related purposes shall be coordinated through _____ and approved by _____.

In addition to the above policies for general use of social media, social media use for work-related purposes shall be conducted consistent with the following:

All social media activities engaged in with Employer resources, including computers or internet access, are subject to Employer's control and discretion. You will have no expectation of privacy when using these systems, and no information is confidential from Employer. Employer has the right to monitor and access social media activity conducted with Employer resources and the right to remove or revise any postings.

Information about [employees, clients, customers, suppliers, constituents, patients, community members] must be protected at all times. Information relating to these individuals and entities shall not be posted unless HR or _____ provides pre-approval.

You may not use personal or Employer-hosted social media to communicate to the general public or to any [employee, client, customer, supplier, constituent, patient, community member] about Employer's [products or services] unless _____ approves in advance.

Posts shall comply with all federal and state laws, including but not limited to those relating to copyright and information protection. Posts shall be accurate and factual.

Employer will remove posts that do not comply with this policy. Employer may also delete spam and comments when it deems appropriate.

If you are contacted for comments about Employer or its business, you must forward the request to HR or _____.

If Employer permits you to comment about Employer or any Employer-related activities, you must identify yourself and your relationship to Employer.

Personal Use of Social Media. Employees may use social media in a personal capacity during non-work hours and without using Employer resources. However, when your association with Employer is identified, known, or presumed, you must comply with the above policies for general use of social media as well as the following requirements:

Personal social media activities shall only be done during personal (non-work) time and without use of Employer resources, including computers and Internet access.

You must use personal email accounts for personal social media activities, not your Employer email accounts.

If, in your personal use of social media, you directly or indirectly acknowledge a relationship with Employer, you must clarify that the comments are your own views and opinions and are not those of Employer. If you directly or indirectly acknowledge an employment relationship with Employer within social media profiles (e.g., listing Employer as the current employer on the “About Me” section of a blog or website), you should add the following language: “The views expressed on this [blog, website] are my own and do not reflect the views of my employer.”

You may not directly or indirectly identify or disclose an association with Employer if the online activities are inconsistent with, or would negatively impact, Employer’s reputation, business or mission.



Washington Workplace Law

Providing practical information to employers in Washington state who face challenges from increasingly complex state and federal workplace requirements.

Airing Dirty Laundry: Addressing Repeated, Frivolous Public Records Requests By Public Employees

POSTED BY ALICIA FEICHTMEIR ON MARCH 08, 2011

Public employers often struggle to balance the requirements of the Washington Public Records Act ("PRA") with the reality of abusive and/or frivolous requestors. The issue takes on an added complexity when the frivolous requestor is an employee. The Washington State Court of Appeals recently shed some light on the issue in *Phillips v. Valley Communications, Inc.* The Court upheld the denial of a public employee's repeated requests for his employer's investigative records following the employee's termination. The Court also found that the trial court correctly imposed sanctions on the employee for frivolous records requests.

The employee, Phillips, who worked at a 911 call center triggering several investigations by his employer, a union, were ongoing, Phillips sent a threatening email to his employer which concluded he was not fit for duty.

In response to his requests for documents, Phillips of the psychiatrist's report. However he was not given a lawsuit in superior court challenging his employer's proceedings. Phillips continued to make repeated requests.

Several months later, Phillips again sued, claiming the trial court denied Phillips' requests and awarded damages. But, the court also denied the employer's public records requests. The Court of Appeals upheld the trial court's decision.

This decision highlights some of the issues public employers face with the PRA with the reality of abusive and/or frivolous requestors.

To address these concerns, public employers should:

- Ensure that your agency's public records policy (particularly the list of records exempt from disclosure)
- Ensure that your agency's public records policy is updated
- Don't withhold records from a difficult employee, identifying the reasons to withhold your exemption claims.
- Don't rely on the courts to stop frivolous requests.
- Keep abreast of the latest legislative efforts pending in the Washington State House and Senate.
- Maintain an open, positive dialogue with employees while explaining the financial drain imposed by repeated requests.

Give Moms a Break: Anticipating Final Regulations On Break Time for Nursing Mothers

POSTED BY ALICIA FEICHTMEIR ON MARCH 11, 2011

Buried in last year's health care bill is a little-known amendment to the Fair Labor Standards Act ("FLSA") that requires employers of non-exempt hourly employees to provide rest breaks for nursing mothers.

Specifically, Section 7 of the FLSA now requires employers to provide reasonable break times when an employee needs to express breast milk for her nursing child – up to one year after the child's birth. Employers are also required to provide a private, dedicated space other than a bathroom, lactating mother. The break time requirement officially became effective on March 1, 2011. The Department of Labor's (DOL) new rule is part of the Fair Labor Standards Act which was signed into law. However, the US Dept. of Labor ("DOL") recently issued preliminary interpretations of the new law and input from the public on several issues raised by the legislation. The DOL is currently reviewing these comments.

[At a Glance – Highlights of WHD's interpretation of the new law](#)

Who Must Comply? The law must be implemented by all public and private employers who employ 50 or more workers. Under the law, only non-exempt employees are subject to the law. The law does not apply to independent contractors, seasonal employees, or employees who are on a temporary assignment to another employer. The law also does not apply to employees who are on a temporary assignment to another employer.

As Needed Breaks: Employers must provide a reasonable amount of break time for nursing mothers. While the frequency of the breaks needed as well as the duration of the breaks will vary, the DOL suggests that lactating mothers typically will need to take breaks to express milk during a shift, at 15-20 minutes per break.

Set Aside A Separate Space: A bathroom, even if private, is not a permissible location for expressing milk. The space must be a permanent, dedicated space, but the location must be appropriate for the maintenance of office or storage space, if shielded from view and free from intrusion.

Compensation Is Not Required: Employers are not required under the FLSA to provide compensation for the purpose of expressing milk. However, where employer breaks, an employee who uses the allotted break time to express milk must be compensated for that break for any other reason.

The Most Employee-Protective Law Governs: The new law does not replace existing laws that provide more protection to employees. However, as Washington has no laws regulating break time for nursing mothers, the new law governs.

Feedback for the DOL: The interpretations described above are still preliminary. The DOL is now developing a final rule. In the meantime, the DOL provides useful information for establishing policies for nursing employees.

The WHD "Break Time For Nursing Mothers" page contains additional information. If you have questions about the information in this posting or your organization's policy, please contact the Foster Pepper Employment and Labor Relations Practice Group.

Tags: break time, employee, FLSA, health care, nursing mother, Patient Protection Act, Wage and Hour Division

Comments Share Link

DISCLAIMER: This publication is for informational purposes only. It does not contain or convey legal advice. Readers should not use or rely on this information without first consulting a lawyer.

TOPICS

- Private Employers
- Public Employers

Don't Bet On It: Are Office March Madness Pools Legal In Washington?

POSTED BY JANELLE MILODRAGOVICH ON MARCH 09, 2011

March Madness is here. References to pools, brackets, and Cinderella are popping up during meetings and hallway conversations across the country. Chances are your employees are organizing co-worker NCAA Tournament pools, which typically involve predicting the outcome of tournament basketball games. Many office pools require a "buy in," in which participants contribute a certain dollar amount to be divided among the victors at the end of the tournament.

As a savvy professional, you might wonder: are office pools legal in the Washington workplace?

The simple answer is no. Office pools with a monetary component are illegal. Gambling activities are illegal in Washington unless they are specifically authorized by state law. The state's Gambling Act was passed in 1973 – several years before the rise of ESPN and extensive television coverage of the NCAA tournament. As a result, the only authorized sports pool in Washington is the 100 square sports pool board, which is limited to buy-in of \$1 per square, must have 100 squares, must randomly assign game scores to each square, and may only be offered once per athletic event.

So will the vice squad be raiding the workplace if March Madness office pools continue? It's not likely. Although NCAA pool participants could be subject to criminal charges, enforcement is unlikely if the monetary component is low. Unless your employees are high rollers, your workplace is unlikely to be featured as a crime scene in the local paper.

Successful pool participants should also remember that pool winnings are recognized as income for IRS reporting purposes. (Of course, the employer should not include prize money on the employee's W-2.)

Putting aside the specter of prosecution, March Madness pools have been known to severely distract large portions of the employee population. With many games available via live webcast, corporate bandwidth capabilities may be strained as employees access streaming media.

At the same time, there are also benefits to the workplace. March Madness can increase worker morale, including positive interactions among employees as they discuss bracket selections and support their chosen teams. Some employers set up viewing parties in company break rooms to further engage employees.

So, as an employer, how do you balance the competing legal and employee relations issues? As a best practice, employers should not encourage or sponsor NCAA office pools where money changes hands. Office pools organized for bragging rights alone are the safest bet for Washington employers.

Tags: best practice, board, brackets, employee, employee morale, gambling, Gambling Act, NCAA, office pool, Washington State Gambling Commission, workplace

Comments Share Link

FOSTER PEPPER PLLC NEWS

Foster Pepper Welcomes New Of Counsel Matthew H. Hooper

Foster Pepper Launches Firm's Fourth Legal Blog – Washington Workplace Law

Property Owners Can Challenge an Agency's Decision to List Waterbodies as "Impaired" if the Listing Diminishes the Property Owner's Property Value

Foster Pepper's Kelly Angell Earns LEED Green Associate Designation

Foster Pepper Announces 2011 1L Diversity Fellowship Recipient

