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## Some Restrictions on Social Media May Infringe Employee Rights (page 1)

In a series of administrative rulings and guidance issued by the National Labor Relations Board, it has been made clear that even public employers must observe certain limits in policing employee's use of social media. Many public employers mistakenly believe that none of the NLRB rules apply to nonunionized public employers. "Section 7" of the National Labor Relations Act applies to all employers including public employers without unions, and takes precedence over state law. Section 7 protects the ability of employees "to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization". Each of these phrases is interpreted separately, and the ability to "engage in other concerted activities for the purpose of collective bargaining" is the ability that the NLRB addresses in discussing the social media policies.

Fortunately, they have provided a fairly clear idea of what you can and should not do. The primary thing to keep in mind when editing or adding social media policies is to make it clear to employees that they are permitted to discuss their own terms and conditions of employment so long as they follow the guidelines, including those of decorum and of good judgment.

### What This Means to Counties

#### *You may:*

1. Prohibit public "harassment, bullying, discrimination or retaliation," even at home or after business hours, of coworkers or others if it could be reasonably attributed to the employer by a member of the public.
2. Inform workers that they are "more likely" to resolve complaints with coworkers by speaking with coworkers or going through the company, rather than posting grievances online. You may state a preference for them to follow any grievance process, and state that failing to do that may impact their ability to maintain good relations on the job, may be reflective of poor judgment, or harm their ability to work with coworkers or clients.
3. You may forbid "inappropriate postings," specifically threats of violence or discriminatory remarks if such remarks could easily be misconstrued as coming from a county representative.
4. You may instruct employees not to reveal proprietary or confidential client information or county information that has been designated as confidential, such as any confidential financial or personal facts or information about others, or private health information about others, as long as you detail the kind of information you mean, so there's no chance of the policy being read to restrict Section 7 rights. If they want to

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discuss financial or work condition information among themselves or in public, about wages and working conditions they are permitted to do this under the NLRB rules so long as they don't violate the privacy rights of another person.

5. A handbook section that admonishes employees to follow identification and authorization checking procedures before releasing specific confidential information about others is acceptable. Although it may restrict the use or publication of confidential information, it merely advises employees to be cautious about unwittingly divulging such information and not any specific information.
6. You may require the employee to know and follow the rules, to keep posts respectful and "appropriate", and as honest and accurate as possible (and corrected when not).
7. You may hold the employee responsible for the effects of the communications: "Ultimately, you are solely responsible for what you post online. Before creating online content, consider some of the risks and rewards that are involved. Keep in mind that any of your conduct that adversely affects your job performance, the performance of fellow associates or otherwise adversely affects members, customers, suppliers, people who work on behalf of [Employer] or [Employer's] legitimate business interests may result in disciplinary action up to and including termination."

### *You may not:*

1. Forbid an employee from releasing or discussing such broad categories of information that the category could reasonably be understood to forbid discussion of, or sharing information about their wages or conditions of employment, as well as the conditions of employment of employees other than themselves. They are permitted to do this under Section 7.
2. Pass privacy or confidentiality restrictions so broad that they might be understood to prohibit employees from discussing their own conditions of employment, as well as the conditions of employment of employees other than themselves, including wages or rules of employment. They may apply to the confidential information of clients and others, but not wages and working conditions.
3. You may not discipline or terminate an employee for engaging in public discussions or group discussions of wages and working conditions so long as the conduct does not substantially interfere with coworker or supervisory-worker relations due to a violation of some other work rule, such as harassment, ridicule, defamation, threats, violations of the privacy of others or confidential information of others, or interfere with work relations in ways unrelated to Section 7 freedoms.

For more information, contact CTSI at 303-861-0507.