

Sociably Acceptable



SOCIAL MEDIA AND THE PUBLIC WORKPLACE

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Survey/Poll



During this presentation you are invited to participate in a survey/poll about your city's use of social media

To participate in the session poll:

- Open the KLC Conference event app
- Select the schedule option and select Friday and go to this session.
- Once you are in the information portal for this session at the top of the app you will see a question mark in a green circle.
- Click on the green circle and you can participate in the live poll

Survey



- How many of you are supporting at least 1 social media platform?
 - Yes - our city has social media
 - No - our city does not have social media

Survey



- For those who answered “Yes” - What platforms are you using?
 - Facebook
 - Twitter
 - Instagram
 - Blog
 - Other

WINDOW SHOPPING

Due Diligence vs. Online Over Kill

Screening Job Applicants

- Negligent Hiring
 - Due Diligence
- Online and social media searches may reveal:
 - Negative behavior
 - Negative comments about prior employer
 - *Relevant* criminal conduct.
 - Misrepresentations
- Can't do online what can't do in person
 - Prohibited inquiries

Survey

- How many of you conduct online searches as part of your hiring process?
 - Yes – why wouldn't we?
 - No – we trust our applicants

Due Diligence vs. Online Over Kill



Due Diligence vs. Online Over Kill

Do:

- Policy governing screening searches
- Use designated individual
 - Not involved or advising in the hiring process
 - Ensure accuracy of information
 - Remove potentially discriminatory information
 - Document search
 - × Rejection based on
- Consider informed consent

Due Diligence vs. Online Over Kill

Don't:

- Violate website user controls or terms of use
- Punish an applicant for the exercise of free speech
- Look into things that aren't publicly accessible

“PEEK-A-BOO, I SEE YOU” Policing Employee Behavior

• What Employee Behavior Can Be Addressed?

- Discriminatory remarks harassment threats of violence or other or unlawful conduct
 - ✦ Duty to investigate
- Violation of copyright/trademark
- False information
- Disclosure of confidential/privileged information
 - ✦ Information that may violate of Open Records
- Conduct that causes disrepute or embarrassment to city
 - ✦ *1st Amendment

Survey

- How many of you have had issues with employees posting online?
 - Yes – who hasn't?
 - No – our employees would never do that!

Policing Employee Behavior

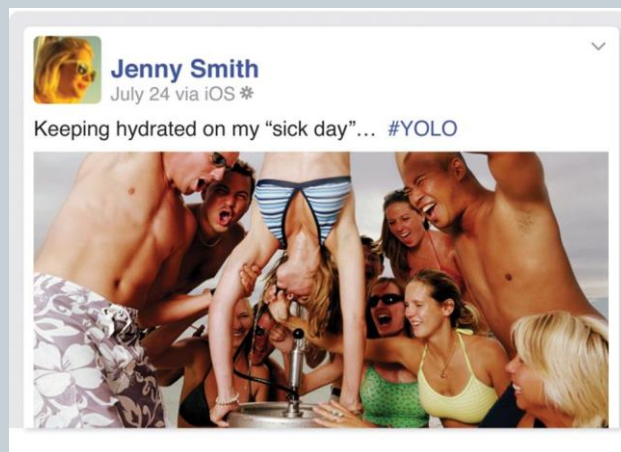


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Policing Employee Behavior

• What Cannot?

- Protected speech/1st Amendment rights
 - ✦ Public employee free speech rights:
 - Must be on matters of public concern
 - May not be protected if too disruptive
 - Be careful disciplining complaints about the city
 - ✦ No free speech rights for statements made pursuant to official job duties
 - ✦ Threats are not protected speech

Policing Employee Behavior

• Protected concerted activity

- NLRB
 - ✦ Protected concerted activity
- *NLRB v. Pier Sixty, LLC*, 855 F.3d 115 (2nd Cir. 2017)
 - ✦ “Bob is a NASTY MOTHER F***ER don’t know how to talk to people!!!! F*** his mother and his entire f**king family!!!! What a LOSER!!!! Vote YES for the UNION!!!!!!!”
 - Expression of workplace concerns immediately before a representation election
 - Did not disrupt the employer’s business activities
 - Employer routinely tolerated profane language in the workplace
 - Never terminated an employee for use of foul language

Policing Employee Behavior

- **NLRA *not* extend**

- Comments that are malicious, obscene, threatening, or intimidating and are harassing or bullying
- Balancing test
 - × Workplace efficiency and preventing disruption vs. public interest speech



Policing Employee Behavior

- **Do:**

- Conduct searches by someone who is not the decision-maker
- Document only relevant results
- Verify
- Employee opportunity to respond
- Access only information that is:
 - × Posted using city equipment.
 - × Posted during working hours.
 - × Publicly available.
 - × Shared with consent
 - **Beware:** True, voluntary consent.
 - Federal Stored Communications Act

Policing Employee Behavior

- **HAVE A POLICY**
 - Distribute to all employees
 - × Signed acknowledgment of receipt
 - Train all employees
- **Don't:**
 - Require employees provide direct access to their social media accounts
 - × "Shoulder surf"
 - Constantly monitor content
 - Create fake profiles
 - View things intended/expected to be private



Survey

- For those of you with social media platforms – do you have a dedicated manager for those sites?
 - Yes - we have a dedicated manager
 - No - who can afford that?
- Do you know all the sites tied to your city?
 - Yes – I think so
 - No – Do I need to?

And . . .



- **City Social Media Sites**
 - Staff dedicated to management of social media sites
 - ✦ Know all your sites
 - ✦ Security for those sites

It's a Record



- **Guidelines for Managing Social Media Records in Kentucky Government**
 - Preservation must reflect: content, context, and structure along with associated metadata (e.g., author, date of creation)
 - Postings inconsistent with agency's policies may require removal from the site
 - ✦ Policy for moderating content consistent with First Amendment obligations

It's a Record

- Must have the ability to identify and retrieve public records created and maintained through social media.
- Not relieved of this obligation if:
 - ✦ Provider discontinue service or delete content
 - ✦ Agencies stops using a social media platform
- Can provider can export the record
 - ✦ If cannot responsible for implementing capture procedures
 - ✦ If can - Terms of Service
 - Stipulate how and when will occur
 - Export must occur before deletes or destroy
 - Notification and export provider goes out of business

It's a Record

- **Open Records Requests**
 - Notice to posters
 - ✦ “Communication through agency-related social media is considered a public record under KRS 171.410(1) and will be managed under the terms of KRS 171.410 through 171.740 and 725 KAR Chapter 1”

Questions



Sources

- Ally, Paul & Lyn Hils Mathews. "Dealing with Social Media in the Workplace." Bench & Bar, Vol. 74, No. 4, Kentucky Bar Association, July 2010.
- Garon, Jon M. "Social Media in the Workplace." Kentucky Bar Association Annual Convention, 2014.
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- Salsburey, Joshua. "Stay Out of My Face(Book)! A City's Guide to Social Networking in the Workplace." 2014.