



Best Practices in Social Media for Employers Part 4 – Social Media: Post-Employment Considerations

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In addition to post-employment obligations, there has been litigation in recent years over who owns an employer's social media accounts when the employment relationship ends: is it the employer, for whom the accounts were initially established? Or is it the (former) employee, who set up, maintained and wrote content for the accounts? The following factors are considered by courts when determining who owns a social media account:

- Who created or directed the creation of the account? Who generated the content for the account?
- Who has access to the information contained in the account, and what type of information is it?
- What is the subject matter of the communications sent from the account?
- Is there a policy or agreement relating to the ownership of the account?
- What is the account's username?

In light of the above, employers should take the following strategic steps in order to protect their ownership interests in social media accounts set up on their behalf:

- Employers should be the creators of any of their social media accounts. If an employee has the idea to set up a specific account, take it under review and take steps to institutionalize the account, such as setting up a team or task force to create, monitor and maintain the account. Having more than one employee contribute to the account's content, and maintaining some level of oversight over the content that

is posted to the account, will protect the employer's claim of ownership to the account.

- Information regarding the followers of or feedback to any particular social media account should be restricted to the account holder, and should not be publicly available. The more information about the account that is kept private, the easier it may be for an employer to persuade a court that having access to the information is critical to the employer's continued business efforts, which would weigh in favor of the employer's ownership interest of that account.
- Employers should control the content on their social media accounts. Employees should not be allowed to post about topics unrelated to the employer's business. An employee's social media postings that are personal in nature may undermine an employer's claim that it owns the account.
- Employers should institute a policy, such as in an employee handbook, regarding its sole ownership of its social media accounts. Alternatively (or in addition to a policy), employers should include information about its ownership of social media accounts in confidentiality agreements or employment agreements with employees.
- Employers should create accounts with usernames that feature only the employer's name or variations of the employer's name. Account names that feature an employee's name, even if the employee's name is included in combination with the employer's name, are more likely to be considered an individual's account rather than an established institutional account.

Previous posts on our Best Practices in Social Media for Employers series can be found [here](#), [here](#) and [here](#).

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