

# SOCIAL MEDIA POLICIES

by Lori Lein, General Counsel, Alabama League of Municipalities

Almost every public employee has access to the world, and all their “friends”, through the use of PCs, tablets, and SmartPhones. These devices provide them with instant access to platforms such as Facebook, Twitter, Instagram, LinkedIn, YouTube and Pinterest. Employees can project themselves, through words and pictures, across town, across the country and across the globe in a matter of seconds – without ever having to leave their desk.

So what is a city or town to do when social media impacts so many aspects of the average municipal employee’s daily life, including their work life? This article provides suggestions about the options available to cities and towns when it comes to developing social media policies. For a complete discussion of the legal issues which can arise when regulating social media use in the workplace, please see “Social Media and Public Employees: Tweet them Right” in the August 2013 Edition of the *Alabama Municipal Journal*.

Completely banning social media in the workplace isn’t realistic in this day and age. First, many would argue that it is a complete morale killer and second, it’s impossible to enforce given the fact that most employees who have been banned simply resort to using their mobile devices to access social networks. Short of a complete ban, however, there are some ways to regulate and limit employee use of social media.

Municipalities should start the process of developing a policy by giving consideration to how social media will be used:

- Official Use, for the express purpose of communicating the municipality’s interests;
- Professional Use, for the purpose of furthering specific job responsibilities or professional duties; and
- Personal Use, for the personal interests unrelated to job duties for the municipality.

First and foremost, a social media policy must make it clear to employees that they have no expectation of privacy or confidentiality when they use any public equipment including computers and cellphones. A policy should include language that the employer has the right to access and monitor its computers, equipment and systems without warning or any specific notice to the employee. Employees must understand that what they say and do on public equipment may be subject



to disclosure and that the employer has the right to back up anything, even if deleted by the employee. Employees need to understand that this can include any personal emails sent using public equipment, even if they are encrypted.

As with any employee policy, it should be clear and understandable. It should include definitions which are broad enough to cover future expansion and include specific examples of devices covered by the policy (cell phones, computers, tablets, pagers, etc.) and make it clear that any device provided by the employer to the employee is intended to be covered by the policy. Along these same lines, a policy should include specific examples of social media outlets and activities that are covered but, again, it should be worded to allow for other social media outlets which may come on the scene after adoption of your policy. Some other important considerations include:

- Encourage the use of good judgment;
- Make it clear that other employment policies apply in the context of social media use (such as policies against discrimination and harassment);
- Consider requiring a request for access to social media from employees who have official or professional need to utilize social media on behalf of the public employer.

As with any employee policy, public employers should provide training on any policy and the training should be mandatory. And perhaps most importantly, any policy should exercise the appropriate amount of control without appearing, in words or in practice, to go beyond the public employer's legitimate interest. And last, but not least, a policy should have a savings clause relating to the protected activity of the NLRA such as "nothing in this policy will be interpreted or applied in a manner that interferes with employee rights to organize, form, join, or assist labor organizations, to bargain collectively through representatives of their choosing to the extent allowed by law, or to engage in other concerted activities for the purpose of addressing the terms and conditions of employment." While it might not completely save your policy should it be challenged, it is important to make the effort to alert employees that the social media policy is not attempting to restrict their rights.

The bottom line is that social media policies are loaded with danger for employers and should be approached with extreme caution and care and certainly shouldn't be established without the advice and assistance of the city attorney. After adoption, it is also vital that the city attorney be consulted and involved in any enforcement of a social media policy. The totality of the circumstances surrounding the social media communication must be carefully evaluated before deciding on any action under the policy. The city attorney will be able to advise whether or not an employee has engaged in protected conduct or speech. And lastly, it will be vital to enforce any policy in a consistent manner from one incident to the next.

