

## Fitness Industry Workplace Law Update - Summer 2018

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Social media can be a great way for companies in the fitness industry to build and engage their communities. The [hazards](#) of social media as to employees, companies, and privacy, however, should not be ignored. This is especially true if social media is key to a business's marketing or employee-recruitment goals. In this issue, we cover three common hazards fitness industry employers may face when it comes to social media.

### Social Media Use by Employees

Most people have some kind of online presence, whether in the form of a personal social media account or comments and reviews on products, news articles, company websites or other people's social media pages. Not only is social media full of information employers may not want to know or that may be unlawful for employers to consider when making employment-related decisions (e.g., genetic information, age, and membership in a protected class), but the risk that [the information](#) is inaccurate or even fake also exists. Situations where employees spend significant amounts of time on social media sites during work time, criticize supervisors, customers, members, clients, or the employer, post inappropriate or distasteful content, or harass, discriminate, or retaliate against coworkers may raise work-related issues. What may appear to be mere complaints about long work hours or low pay could be construed as protected concerted activity (regardless of whether your workforce is unionized) and any possible adverse employment action should be considered carefully. While each situation is unique and should be handled on a case-by-case basis, in general, if you obtain or learn about social media content lawfully and it is not prohibited by state or federal discrimination laws, you may be able to utilize this information in employment decisions.

There are many [examples in the news](#) of employees who make comments online that are unrelated to their employment; however, a negative public reaction reflects poorly on their employer. The employer must consider whether and how to react. Sometimes disciplining the employee or distancing itself from the comment will be sufficient, although employee termination or discipline often results. Such situations require extra care and appropriate analysis of the potential legal implications.

Organizations should maintain a social media policy and [ensure policies and procedures are regularly updated](#) to address the newest social media platforms, trends, and legal precedent. Outdated or poorly written social media policies can expose employers to litigation or risk harm to their reputation. Well-crafted policies, especially when combined with good procedures, can minimize these risks.

### Company-Sponsored Social Media

In the ever-expanding technology age, social media use continues to grow and new platforms regularly arise. Organizations in the fitness industry, especially those operating at the local (as opposed to the national) level, regularly utilize company-sponsored social media vehicles as part of their marketing strategy. Social media continues to be a channel for connecting with customers, members, clients, and others in the industry.

Many fitness organizations also are leveraging employee advocacy through social media. In the digital age, word-of-mouth tactics can be an effective tool to extend a business's profile. However, it also can create significant risks for employers who rely on employees to use their personal social media channels for company-sponsored content, especially if the employee fails to identify the relationship to your organization.

Although employers should not require employees to use their personal social media accounts to promote an organization's brand, and should actively monitor the content on company-sponsored accounts, with the [appropriate policies](#) and procedures in place, the risks related to company-sponsored and employee advocacy social media promotions can be greatly reduced.

### Privacy/Data Security Issues Related to Social Media

Every organization should be concerned with privacy and data security. These issues affect not only your

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employees, but also consumers (*e.g.*, customers, members, and clients) with whom you do business. While reviewing an applicant's or employee's social media content may be helpful to employers, many state laws restrict an employer's ability to request or require employees or applicants to provide access to their social media and online accounts. The restrictions in 26 states already apply to employers. We anticipate the other states eventually will enact similar legislation. Therefore, requiring or requesting employees or applicants to provide access to their accounts is not recommended. Additionally, many of your employees will have access to personal information as part of their job duties. Although it is important (and often legally required) to implement safeguards to protect this information, no set of safeguards is absolutely secure. In the event that social media is used to disclose private or personal information about your customers, members, clients, or employees, you should be prepared to immediately respond and comply with applicable breach notification laws.

Social media and similar online platforms are here to stay. While social media offers many advantages, as with most great innovations, the legal risks and issues are not immediately apparent. Be proactive in addressing social media issues to avoid potential hazards.

Please contact your Jackson Lewis attorney with any questions.

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