

## Social Media and the Real Estate Industry: The Importance of a Well-Crafted Policy

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Social media continues to permeate business operations, especially in the real estate industry. The vast majority of companies in the real estate industry utilize various platforms to attract leads and connect with buyers, tenants, customers, and other businesses. While social media presents unique business opportunities, real estate employers and brokerage companies should ensure they have up-to-date policies outlining the company's expectations for using social media and help ensure compliance with federal and state laws and other industry standards.

With the new year approaching, now is a great time for real estate employers to begin to review their social media policy or develop a new one. While the policy will be unique to each company, depending on its business, real estate entities should consider the following when revising or developing their policy:

- **Tone:** Because of the benefits of social media and high engagement with it in the real estate industry, ensure the policy encourages participation, but also expressly communicates the company's expectations for the tone and content of social media activity. Will the content of postings be scrutinized for potential problematic language that may be discriminatory, arguably involve steering or other unlawful conduct, or perhaps just be in poor form and inconsistent with the company's image?
- **Coverage:** Specify which employees, agents, and independent contractors to whom the policy applies and the circumstances for which the policy will apply. For example, will the policy regulate activity on personal social media accounts? Will it apply to temporary employees, independent contractors, and so on? Will disclaimers be provided that clearly state the views expressed are the employees or agents' own and do not express the position of the company? If so, how will this be addressed given other compliance issues (such as those noted below in New York where an agent's affiliation with their brokerage company is required in advertisements under applicable regulations)?
- **Expectations and Compliance:** Policies should include guidelines for employee, agents, and independent contractors on the use of social media and communicate expectations to ensure compliance with relevant laws and industry standards, including various real estate industry codes of ethics. Additionally, real estate entities should identify and ensure compliance with company policies applicable to using social media platforms, such as policies prohibiting discrimination, harassment, and retaliation. For instance, in New York, the Department of State and the New York Real Estate Board have implemented advertising regulations for real estate licensees, including, without limitation, for advertising by email, websites, and electronic bulletin boards that specify, among other things, where advertisements may be placed and certain required information that must be included (like the real estate brokerage's full address and telephone number). 19 N.Y.C.R.R. § 175.25. For web-based advertising, the New York regulations also require that any websites are "duly authorized by their supervising real estate broker ... and they remain subject to the supervision of the real estate broker with whom the licensees are associated while the website is live." 19 N.Y.C.R.R. § 175.25. See also New York's guidance on "Advertising for Real Estate Licensees" and "Checklist for Real Estate Advertising."
- **State Law/National Labor Relations Act Considerations:** Given various state law considerations and past National Labor Relations Board (NLRB) decisions requiring social media policies to be narrowly drawn, employers should work with legal counsel to craft a social media policy that establishes company expectations and encourages participation while avoiding legal pitfalls. When companies are faced with adverse social media activity or campaigns (by employees, customers, bloggers, or others), they frequently are unprepared to take appropriate steps to investigate or to weigh the legal, business, reputational, and related risks in deciding what actions, if any, to take. It is important to have a clear workplace social media policy in place to help prevent the likelihood of an incident or at least limit its impact. While courts and the NLRB seem to be more favorable to companies and

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### Practices

Labor Relations  
Privacy, Data and Cybersecurity

### Industries

Real Estate

employers of late in approving such policies, tread carefully. Aim to develop a policy that achieves the company's legitimate business interests without compromising individual rights to privacy under statutory and common law and rights related to freedom of speech.

Real estate companies and employers should continue to exercise care when addressing or responding to their employees or agents' social media usage. Below are additional resources for navigating social media policies in the real estate workplace and in general:

- Third Circuit Affirms Dismissal of Employee Who Advocated Violence in a Social Media Post
- NLRB Approves Workplace Social Media Policy Limiting Employees' Online Communications
- The Growing List of States Protecting Social Media Privacy

For additional guidance, please contact a Jackson Lewis attorney.

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