

Social Media: Legal Implications for Small Businesses

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Disciplining Employees over Social Media Use

- In the absence of a company social media policy, the legal justification for firing an employee who disrespects their profession, employer, or coworkers will depend on the answers to the following:
 - a. Has the relationship between the employee and the subject of the social media contents (Employer, coworkers etc.) been damaged beyond repair?
 - b. Have the comments made on social media sufficiently compromised the reputation of the brand in front of a large enough audience to warrant such disciplinary action.

Sample Social Media Policy

1. This policy applies to all employees of *Lulu's Fashions*.
2. This policy covers all current forms of social media (including but not limited to Facebook, Twitter, Instagram, LinkedIn, Vine, YouTube, etc.) as well as to any future forms of social media, including any and all future technology.
3. This policy is not limited to official *Lulu's Fashions* blogs and social media pages but also extends to the appropriate use of private social media accounts of employees.
4. Owing to the legal and security risks involved in social media, all employees of *Lulu's Fashions* must use caution and good judgment when posting comments, updating statuses, or otherwise uploading content to social media outlets.
5. All employees of *Lulu's Fashions* must:
 - a. Exercise good judgment when posting from work AND personal computers or devices on company and on personal time, and
 - b. must refrain from using the company name on private social media accounts except in circumstances in which it is explicitly noted that one's private views "are not those of *Lulu's Fashions*."
6. Disciplinary measures may be taken if these provisions are not followed, up to and including termination.

Posting Photographs Online

- If you're posting photographs of people online it is wise to get their consent beforehand through either a signed waiver or verbal permission.
- When posting photos with other companies' trademarks, be aware that you might be liable for trademark infringement if your product and the company's product are substantially similar.

- Make sure that photos posted on company websites or social media sites don't feature copyrighted works. Keep in mind that incidental inclusion in photos is permissible.
- If you're unsure, the wisest course of action is to either take the photo down or seek permission to use it from the owner of the picture, trademark, or copyright.

Dealing with Defamation

- Speak with a defamation lawyer to get advice specific to your situation
- Consider ignoring it: Sometimes the best approach to negative comments (even if untrue) is to simply let them fade
- If you choose to ignore the comments, it can be useful to bury them by creating additional, positive pages (through Facebook, Twitter, formal websites, business profiles or other review sites) to rank higher on search results than the negative comments
- If you believe that the comments will prove more harmful than bringing further attention to the matter, consider refuting the comments on the forum they were posted in
- If refuting the comments was unsuccessful or the comments are so egregious that they are harmful if left online, consider having a lawyer send a cease and desist notice to the relevant parties
- Litigation should be a last resort - Consult a lawyer to determine if this is necessary or would be likely to provide any benefits in your specific case
- Regardless of the approach(es) you choose to follow, it is helpful to collect and preserve the evidence of the defamatory comments - If possible, have an independent person save digital and printed copies of all the postings, search engine results, and any other relevant pages