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Employment Practices

UPDATE

Risks Posed by Employee Blogging:



*Publicly Airing Your Organization's
Dirty Laundry?*

**Tackling
the emerging
legal and ethical
challenges
associated with
internet blogging.**

We welcome comments,
suggestions and questions
from our readers.

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Web logs, or “blogs” are online personal journals posted on the Internet that have gained tremendous popularity over the last several years. Blogs provide a forum for people to write or post personal observations and opinions, often pertaining to work-related experiences. While off-duty, employees and volunteers have always been able to discuss work issues on their own time and in a private setting. However, blogging puts information in a much more public forum — on the Internet, with an unlimited audience. Consequently, emergency service organizations (ESOs) should be concerned about what their employees or volunteers are communicating on personal blogs and what the ESO can do about it, if anything.

This article tackles the emerging legal and ethical challenges associated with internet blogging. Information posted on blogs may pose multiple risks to your ESO, including harassment or discrimination, defamation, breach of confidentiality, damaging the ESO's reputation in the community, or violation of company policy. What actions can and should you take if an employee or volunteer posts information about the ESO, its business operations, or other workers? Can an employer discipline members for making off-color comments about their work environment or fellow personnel?

Problems Presented by Employee or Volunteer Blogging Harassment and Discrimination -

What if a member of your ESO posts information on a blog about a coworker that could be considered harassing or discriminatory in nature? Spreading gossip or rumors, or even making false allegations in a public forum like a blog, can be particularly offensive and cross the legal line of unlawful harassment or discrimination. A member of your ESO slinging mud about a coworker on a blog could be used as evidence in a hostile environment claim against your organization.

In determining whether certain comments constitute unlawful harassment, the level of severity of the alleged harassment is assessed. Arguably, public dissemination of the blog and associated humiliation may be so severe as to be considered unlawful. For instance, an employee may make inappropriate comments on a blog about a coworker's sexual or dating relationships. This communication will be looked at differently than if the comments were limited between two coworkers in a face-to-face encounter.

Generally, your ESO's non-discrimination and harassment policies will apply to blogging activities. If blogging language is sufficiently severe or pervasive as to contribute to a hostile work environment, your ESO can take appropriate disciplinary action. ESO members aren't immune from ESO policies just because questionable comments are posted off-duty or off-site.

Confidentiality Breach - A blog could be the forum where an ESO member discloses confidential information about the ESO, its business operations, or even sensitive medical or personal data about a member of the community. For example, a firefighter/paramedic could post information on an internet blog containing inappropriate material about a patient.

Once again, blogging ESO members don't get a free pass from following confidentiality rules. In fact, divulging confidential information on the worldwide web could be considered

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deserving of more severe discipline than internal breaches of confidentiality.

Damaging the ESO's Reputation -

Employees may use blogs to complain about their jobs, superiors, coworkers, or the direction of the ESO. Once again, badmouthing through blogging poses unique risks because the information is accessible to anyone in cyberspace. This can result in significant harm to the ESO's reputation and goodwill as well as to the individuals targeted in the blog. A strong argument can be made that publishing disparaging or confidential information on a blog is just as damaging to an employer as publishing it in a newspaper or magazine.

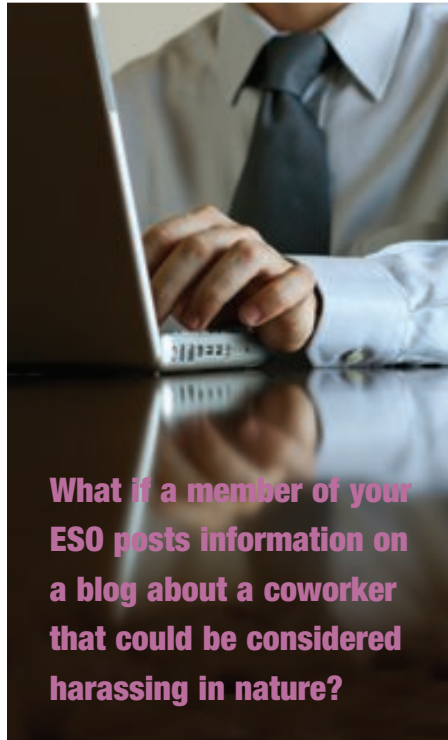
Employers should take note that under certain situations an employee who is blogging may be afforded protections of labor laws that give employees the right to engage in concerted activity. This allows employees freedom to discuss the terms and conditions of employment with coworkers and outsiders, possibly in an effort to unionize. You are encouraged to consult with your ESO's locally retained labor and employment attorney when addressing possible attempts by employees to form an association or collective bargaining unit.

Bloggng content may also be protected under whistleblower laws. What is sometimes referred to as "whistle-blogging," an employee may choose the public format of blogging to blow the whistle on an employer's illegal business practices. Similarly, anti-retaliation provisions may also be applicable to blogging in the context of federal and state laws prohibiting job discrimination.

On-Duty or Off-Duty Blogging?

Bloggng while on-duty, or with ESO equipment, is typically forbidden or at least discouraged by most organizations. The more complicated questions arise from blogging while off-duty. Bloggers are getting in trouble for blog posts about coworkers or the ESO that they write on their own time. Thus, blogging about work while off-duty can get a member into as much trouble as blogging from work.

A limited number of states have enacted



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laws protecting employees from demotion, suspension, or discharge from employment for lawful conduct occurring during nonworking hours away from the employer's premises. On a similar note, an individual employment contract or collective bargaining agreement may limit an employer's right to consider off-duty conduct. Consult with your local legal counsel to determine the applicability of any such contractual obligations.

Blogger's First Amendment Rights?

What about a blogger's freedom of speech or expression as protected by the federal Constitution? Many employees mistakenly believe their employer cannot limit off-duty free-speech rights. In most cases, an employee's First Amendment freedoms of speech are limited in the private employment context. An employee may be free to say what he wants to say, but suffer the repercussions at work for making statements that harm the employer or its workers. Constitutional protections generally limit governmental action, which may apply to public employers but not private employers.

Bloggng Policy?

Some organizations are reluctant to develop policies specifically regarding off-duty blogging because of the potential backlash against the employer playing

"Big Brother". Some ESOs fear negatively impacting personnel relations by instituting a blogging policy.

There are two modes of thought regarding blog policy development. The *first option* is to not develop a separate policy for blogging. This would entail simply following a general policy statement along the lines of the following: "The ESO expects all employees and volunteers to act professionally on the job, and refrain from behavior on and off the job, that could adversely impact the ESO's reputation, mission, or otherwise violate the Code of Conduct." The *second option* would involve developing a stand-alone blogging policy or enhance the existing electronic communications systems policy to include blogging.

If instituted, a workplace blogging policy should address, at a minimum:

- Personnel may not use ESO equipment or technology for personal purposes, including maintaining a personal blog.
- Employee publications, including personal blogs, must not include sensitive confidential information related to the ESO or otherwise violate the ESO's non-discrimination and harassment policies or code of conduct.
- Employees are prohibited from making defamatory comments when posting blogs about the ESO, its personnel, or parties doing business with or serviced by the ESO.
- Employees must clearly communicate that the views expressed in their blogs are their own and not those of the ESO.
- Employees who violate the electronic communications system policy will be subject to disciplinary measures, up to and including termination.

Conclusion

Bloggng is a new phenomenon, and your ESO is encouraged to take appropriate measures to address associated risks. Training and education for ESO personnel is recommended. Individuals' personal privacy and expression interests need to be balanced with the ESO's need to protect against discrimination, confidentiality breaches, and harm to its professional reputation.

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