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2900 Highwoods Blvd.
Raleigh, NC 27604-1060

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THE VOICE

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Welcome to The Voice Newsletter for Spring 2015

The Voice provides a quarterly update on external regulations at the state and federal level that affect your practice along with timely advice on ways to respond. It is provided as a benefit to Medical Mutual members.

The Voice is written by Breni Malpass, HR Advisor.
You can reach Breni at breni.malpass@callhrexperts.com or 1-800-HREXPRT.

Must-Reads for Every Practice

Social Media and the Workplace

Facebook, LinkedIn, Snapchat, Instagram, Twitter…Social media permeates our society both on a personal and professional level. Employers use social media to market their companies, recruit employees, and for internal communications. Employees use social media to post comments and pictures about their personal opinions, their families and friends, and sometimes about their employers. It's everywhere! The question many of you have as an employer is where to draw the line.

What if an employee posts negative comments about the workplace or co-workers online? Can you terminate them? It depends. What if they post derogatory comments about their supervisor, can you terminate? Once again…it depends. What if they post a picture of your practice and say something negative about your patients? Surely, we can fire them, right? Employers have to walk a very fine line when it comes to social media. It can be a delicate balance between protecting the employee's rights to engage in lawful activity and the employer's right to conduct and protect business interests.

There are some employee communications on social media that may be protected by the National Labor Relations Act (NLRA). For example, protected employee communications may include the following:

- Complaining about unsafe conditions, unethical behavior, etc.
- Protesting wages, hours or working conditions
- Communicating with co-workers on social media about wages, hours, or working conditions

These types of activities constitute "concerted activity" and are protected under the NLRA whether your employees are covered under a collective bargaining agreement or not.

Companies whose employees don't have access to the Internet at work may think they don't need a handbook policy on social media. Though employees may not have access to the Internet on company equipment, many posts are made from personal devices while at work. In addition, employee posts on social media are often made away from work and may include remarks about work situations, reveal company confidential information, or make harassing remarks about another employee. Having a policy in place makes employees aware of proper use of social media relating to work discussions. It also lets them know that inappropriate use in violation of the policy may result in disciplinary action.

In "The NLRB's Social Media Guidelines A Lose-Lose: Why the NLRB's Stance on Social Media Fails to Fully Address Employer's Concerns and Dilutes Employee Protections," Chris Schlag outlines that the NLRB suggests that employer's policies include the following:

In This Issue:

Contact HR|Experts:
Direct: 919-431-6096
Main: 888-473-9778
Fax: 919-431-6094
breni.malpass@callhrexperts.com
Phone calls and messages will be responded to 8am-5pm Monday-Friday.

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MUST-READs *(cont.)*

- Explanation that employees are free to express their own views and opinions on social media but may be held responsible for those statements;
- Concise and detailed definition of the types of information an employee is not permitted to disclose (i.e. confidential information or trade secrets);
- Definitions with specific examples of communication that will be prohibited under the company's policy of anti-discrimination, harassment or bullying;
- A clearly worded statement that the policy will not be applied in a way that restricts an employee's use of social media to engage in protected activities.

If you currently have a policy and would like to ensure it is up to date or do not have a policy in place and would like to implement one, please contact HR|Experts for more information at breni.malpass@callhrexperts.com or 1-888-473-9778.

Source: Schlag, C. "The NLRB's Social Media Guidelines A Lose-Lose: Why the NLRB's Stance on Social Media Fails to Fully Address Employer's Concerns and Dilutes Employee Protections," *Cornell HR Review*, Sept. 3. 2013, http://www.cornellhrreview.org/wp-content/uploads/2013/11/Schlag_Chris_The_NLRBs_Social_Media.pdf

ADA Q & A

If an employee cannot provide an exact return to work date, can I automatically deny their leave request?

Issue: A medical assistant has epilepsy and recently started having frequent, unpredictable seizures at work. Her physician has suggested she take a medical leave of absence until her seizures can be controlled. Do you have to grant her request, or can you automatically deny her leave request because she hasn't given you an exact date of return?

Answer: According to the Americans with Disabilities Act, granting leave to an employee who is unable to provide an exact date of return may be a reasonable accommodation, unless to do so would prove to be an undue hardship. Some disabilities, such as epilepsy, can be successfully controlled. However, episodic impairments associated with such disabilities may create a need for leave due to the frequency and severity of the episodes. In this situation, the medical assistant is having frequent, yet unpredictable, seizures and it may be unknown how long it will take to get them under control. Therefore, the employee may only be able to provide the employer with an approximate return to work date.

When faced with such a situation, or if an employee's return to work date is extended due to complications, it's imperative that the lines of communication remain open. Employees should be reminded to keep employers informed of their progress and discuss the need for any additional leave that may be required. Specifically, employers can require that an employee provide periodic updates on his or her condition and possible date of return. As medical conditions improve and/or change and return to work dates are adjusted, employers may need to reevaluate whether continuing to grant leave would prove to be an undue hardship.

Source: U.S. Equal Employment Opportunity Commission. EEOC Publication: Revised Questions and Answers about Epilepsy in the Workplace and the Americans with Disabilities Act. n.d. Accessed February 2, 2015. http://www.eeoc.gov/laws/types/epilepsy.cfm

Social Medial Law Passed In Virginia

Virginia has recently passed legislation that prohibits employers from requiring prospective or current employees to disclose their social media account usernames or passwords. The law also forbids employers from forcing employees to add others, such as co-workers, supervisors, or an administrator to the list of contacts connected to their electronic accounts.

This new law will become effective on July 1, 2015 and will also protect employees from disciplinary action for refusing to comply with an employer's request or demand to violate these privacy protections.

The law also does not prohibit employers from obtaining information that is part of the public domain or from conducting compliance investigations or investigations into alleged employee misconduct or illegal activity. In addition, if the employee uses a company provided electronic device and the employer inadvertently receives the employee's username and password associated with a social media account, the employer will not be held liable provided they do not use the information to access the account.

For further information regarding the bill, you may visit: http://j.mp/VA-Social-Media-Law

Source: "Daily Document Update: HR Compliance Library, ¶33,859, Virginia enacts social media privacy law — STATE LAW, (Apr. 3, 2015)". Wolters Kluwer Law & Business Databases. Accessed April 27, 2015. http://intelliconnect.cch.com.

Georgia and Virginia Implement "Ban the Box" Policies

On February 23, 2015, Governor Nathan Deal signed an executive order implementing "ban the box" hiring policies in state government. This is the first state in the South to implement such a policy. The goal of Georgia's "ban the box" policy is to implement a fair hiring policy for all applicants, even those with a criminal history.

Similarly, on April 23, 2015, Virginia Governor Terry McAuliffe signed an executive order which requires the removal of criminal history questions from state employment applications. The intent of the Virginia "ban the box" policy is to allow more applicants to be considered for jobs in which they are qualified. The policy will only apply to employees who are covered by the Virginia Personnel Act and the executive branch of government whom is subject to the authority of the Governor.

"Ban the box" policies require an employer to remove the criminal history question from the employment application so that the employer will consider a job applicant's qualifications first. The policy does not mean you have to hire convicted criminals, or that you cannot ask an applicant about criminal history or conduct criminal background checks. It just requires you to perform them only after you have deemed the applicant qualified (i.e. post–employment offer).

So what does "ban the box" mean for private employers in VA and GA? Nothing yet. However, the "ban the box" movement is growing. So far 17 states and 100 cities and counties have implemented a "ban the box" policy for public employers. Six states, the District of Columbia, and eleven cities have extended those policies to private employers.

You can find more information regarding the "ban the box" initiative here: https://www.nelp.org/campaign/ensuring-fair-chance-to-work/

Sources:
"Daily Document Update: State Employment Law, ¶69,280D, Georgia becomes first state in South to implement "ban the box" hiring policy — GEORGIA — Background checks, (Feb. 26, 2015)". Wolters Kluwer Law & Business Databases. Accessed April 27, 2015. http://intelliconnect.cch.com.
"Daily Document Update: HR Compliance Library, ¶33,869, Virginia Governor McAuliffe signs Executive Order to "ban the box" on state employment applications — STATE LAW, (Apr. 7, 2015)". Wolters Kluwer Law & Business Databases. Accessed April 27, 2015. http://intelliconnect.cch.com.

North Carolina Distribution Company Must Pay $50,000 to Settle an EEOC Religious Discrimination Lawsuit

Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs and is prohibited by the federal law known as Title VII of the Civil Rights Act of 1964. The law protects not only people who belong to traditional organized religions, like Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical, or moral beliefs. Unless it would be an undue hardship on the employer's operation of its business, an employer must reasonably accommodate an employee's religious beliefs or practices. This applies not only to schedule changes or leave for religious observances, but also to such things as dress or grooming practices that an employee has for religious reasons.

Recently, a Raleigh, North Carolina Beverage Distribution Company has been ordered to pay $50,000 plus additional relief to an applicant in order to resolve a religious discrimination lawsuit. Specifically, the applicant, who was a practicing Rastafarian, applied for a job as a delivery driver with the company in May 2014. In accordance with Rastafarian religious beliefs, the applicant had not cut his hair since 2009; however, the company informed him that he would have to cut his hair if he wanted the position. The applicant told the company he would not cut his hair due to his religious beliefs and the company refused to hire him.

In addition to paying $50,000 in damages, the company must also create a formal religious accommodation policy, administer annual training to employees on the topic of religious discrimination, and post a copy of its anti-discrimination policy at its Raleigh, NC location.

Additional information about Religious Garb and Grooming can be found at:

- http://www.eeoc.gov/eeoc/publications/qa_religious_garb_grooming.cfm
- http://www.eeoc.gov/eeoc/publications/fs_religious_garb_grooming.cfm

Source: U.S. Equal Employment Opportunity Commission. Press Release. January 20, 2015. Accessed April 27, 2015. http://www1.eeoc.gov/eeoc/newsroom/release/1-20-15.cfm