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Banning the Blog: Updating the Employee Handbook for an "Online" World

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With the advent of social networking Web sites and more pervasive Internet usage, employees are posting information on Web sites and "blogs" concerning their employers. The content on these postings – which may contain sensitive or embarrassing information – can be accessed by anyone, including the employer's customers, suppliers and vendors. Significantly, the law recognizes that employers have a legitimate need to maintain an orderly workplace and protect confidential business and client information. Nevertheless, employers must be cautious in handling issues related to their employees' Web sites and blogs.

Our May 5, 2009 Labor & Employment news bulletin (<http://www.ruden.com/assets/attachments/145.pdf>) discussed that an employer's taking adverse action against its employee based on his or her participation in or opposition to a discriminatory action or employment practice may give rise to a retaliation or whistleblower lawsuit by the employee. Again, an employer may be liable for retaliation regardless of whether the underlying employment practice is ultimately found to be lawful. In order to have a valid retaliation or whistleblower claim, an employee must act in a *reasonable manner* in connection with opposing a discriminatory action or employment practice.

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It is likely to be litigated whether employees' Internet postings or blogs constitute reasonable opposition. In this litigious environment, an employee seeking to build a case may use a blog or Web site posting to document his participation in or opposition to an employment action or practice. The employee (and perhaps the EEOC) may contend that such postings constitute a reasonable manner of opposing an employment action or practice. *Although it may seem obvious, a prudent employer may want to update his employee handbook to clarify that internet postings or blogs constitute an unreasonable manner of opposing employment decisions or practices.* Further, the policy should set forth the appropriate procedure for complaining about employment decisions and practices. An employer will be in a stronger position to defend a retaliation or whistleblower claim if it sets this policy (and obtains a signed acknowledgment of the revised handbook from all employees) *before* its employee makes an objectionable online posting.

To ensure that its employee handbook is current with changes in the employment laws and emerging societal issues such as social networking, an employer should periodically consult an employment attorney.

If you have questions regarding this topic or would like to have your employee handbook reviewed or updated, contact Dan Matlow or any Ruden McClosky labor & employment law attorney. Daniel Matlow is a partner in Ruden McClosky's Litigation Practice Group, in Fort Lauderdale, Florida. For more information about Ruden McClosky please visit www.ruden.com.