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How a Multinational Employer Can Craft a Global Social Media Policy

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Social media is so powerful that some argue Russian manipulation of it changed the result of a U.S. presidential election. In the employment context, social media is not quite that powerful, but employment-context social media is pervasive, reaching interactions between employers and employees, interactions among co-workers, and staff interactions with the outside world.

The bright side to employment-context social media—both the big open platforms and internal employee-chat functions on company intranets—is that it facilitates workplace communications. Used correctly, social media can keep staff engaged, connected and informed.

But management inevitably sees a more complex dimension to employment-context social media. The old expression "never pick a fight with someone who buys ink by the barrel" became obsolete when newspapers lost their monopoly on communicating with the public. The new, inverse expression is "everyone with a cell phone is a reporter." Today, social media empowers everyone from the president of the United States down to rank-and-file laborers to bypass regular news outlets and broadcast opinions, photos and re-tweets directly to targeted groups, be they a given company's workforce or the entire online "twittersphere."

As an example, when America's former first lady Barbara Bush died, a California English professor on a semester-long sabbatical from her university tweeted that "Bush was [an]...amazing racist who... raised a war criminal. I'm happy the witch is dead. can't [sic] wait for the rest of her family to fall to their demise the way 1.5 million iraqis [sic] have," and added that she was dancing "happily on the grave of someone I despise. It's SO FUN." As the inevitable "whirlwind of anger kicked up," the *Los Angeles Times* (April 19, 2019) reported that the professor "taunted her critics, bragging about her $100,000 salary as a tenured professor...declar[ing]: 'I will never be fired.'" At a news conference in response, her university employer " call[ed] the issue a personnel matter," announced "the university was beginning a review of [these] tweets" that "would involve the university system's lawyers [and] union representatives," and asked: "Does tenure mean that you, technically, cannot be fired? The answer to that is no."

This illustrates that employers have a keen interest in wresting some measure of control over employee social media postings that might implicate, even if just by association, the business, the workforce or the brand. No one knows when the next worker with an agenda or just a poorly-worded opinion will "go viral" with a post linking the company to controversial political positions, criticizing the business, taunting a supervisor, harassing a subordinate, spreading rumors or lies about the brand, disparaging company products, launching a union organizing drive, leaking trade secrets—or haplessly touting company products in a way that violates advertising laws.

A domestic employer in some local country facing these concerns can try to control workers' social media postings complying with local domestic law. That can be a challenge, because most every legal system respects workers' off-duty, off-premises "free speech" broadcast on tech devices they themselves own. And so crafting, launching, implementing and enforcing a social media policy in just one country can be tough. But for a *multinational* employer, the legal compliance issue gets a lot tougher, because the challenge proliferates across all jurisdictions in play.

Here, we address how a multinational headquarters can surmount cross-border legal hurdles and craft a viable and enforceable *global* social media policy. To explain how a multinational can do that, we answer five questions:

A. Is a single global social media policy viable—or are separate, aligned local policies necessary?

B. Should a *global* social media policy account for local restrictions under domestic *American* labor law?

C. How can a multinational control workers' off-duty, off-premises "free speech" on devices they themselves own?

D. Which topics should a multinational employer account for in a global social media policy?

E. How, logistically, does a multinational launch an enforceable global social media policy across overseas workforces?

A. Is a Single Global Social Media Policy Viable—Or Are Separate, Aligned Local Policies Necessary?

These days, multinationals issue global HR rules—be they free-standing policies or provisions in global codes of conduct/ethics—on lots of aspects of workplace behavior, like: bribery/improper payments, insider trading, conflicts of interests, discrimination/diversity, harassment/bullying, and more. But because laws in each local country regulate HR topics, any single global HR rule enforceable across multiple jurisdictions that addresses some aspect of workplace behavior must inevitably make compromises or accommodations. Multinationals are usually willing to make compromises and accommodations so they can promulgate a single, uniform global HR rule, policy or code of conduct provision.

Yet there are certain *other* topics of human resources which laws around the world regulate so granularly and so distinctly, from country to country, that a single global work rule, policy or code of conduct provision just does not work. Think of paid time off/vacations/holidays, work hours/overtime, employee benefits, and disciplinary/dismissal procedures. On inherently local topics like these, multinationals tend to revert to *local* practices (or else multinationals issue one global principle and tailor it locally, say, by issuing a template global policy plus local-country riders or addenda).

Here we focus on employment-context *social media* rules. Is social media among the human resources topics appropriate for a single global rule, policy or code provision? Or is social media a topic where a multinational is better off issuing separate local HR policies—aligned local policies or a global template plus local riders or addenda? The answer depends on each multinational's needs and strategies. Most multinationals prefer to issue a single global social media policy, unmodified locally. But crafting a single social media policy to apply simultaneously across multiple jurisdictions—without local riders or addenda—requires compromises and accommodations. Employee use of social media is one of those areas where a localized approach works better.

Any multinational deciding whether to plow ahead with a single but blunt global social media policy or whether to tailor nuanced, localized social media policies, riders or addenda should account for three issues:

- *Global policies on other topics:* Consider the multinational's HR rules on other topics across its international workforces. Does the organization host a suite of well-developed global policies and rules? Or do its various overseas subsidiaries go their own way, issuing local work rules, riders or addenda consistent with local practices, on many other topics? An organization that falls on the "lots of unmodified global policies" side of this spectrum can more easily enforce a single global social media policy.

- *Social media philosophy:* Articulate the multinational's core values as to employee social media rights and restrictions. Where does the organization fall on the spectrum between supporting employee free speech and championing employees' right to do what they want on their own time without interference from management, versus locking down employer trade secrets, protecting confidential information and upholding the company's reputation and brand integrity? An organization that falls on the "free employee speech" side of this spectrum can more easily enforce a single global social media policy.

- *Compromises to comply with U.S. labor law:* Factor in the inevitable compromises and accommodations in crafting a compliant domestic U.S. social media policy conforming to U.S. labor law. Are those compromises and accommodations so restrictive that the organization is better off bifurcating a watered-down U.S. social media policy from a tougher policy to apply across the rest of the world? An organization less concerned about exporting a watered-down, U.S.-compliant approach to social media can more easily enforce a single global social media policy.

B. Should a *Global* Social Media Policy Account for Local Restrictions under Domestic *American* Labor Law?

U.S. employment-at-will offers American employers a lot of freedom and flexibility to promulgate the workplace policies employers want to impose. Of course, American work rules cannot illegally discriminate and must comply with certain other laws. But for the most part, U.S. employers can and do impose lots of non-discriminatory but tough policies on their staff. As just a few specific examples, think of co-worker dating disclosure mandates, mandatory reporting rules requiring whistleblowing, and random drug screening programs.

When a U.S.-headquartered multinational globalizes some HR policy that until now had applied only domestically within the U.S., the employer often finds itself having to water down or loosen up the policy to account for stricter regimes outside employment-at-will. For example, it is almost impossible to extend, internationally, tough American-style work rules on the three topics mentioned—dating disclosure, mandatory whistleblowing, and drug screening.

But not as to *social media* policies. Unexpectedly, social media policies happen to be the polar opposite. Social media policies trigger a surprisingly tough principle fiercely regulated under domestic U.S. labor law but virtually unregulated anywhere else on Earth. The upshot: A multinational promulgating a global social media policy actually enjoys a lot more freedom and flexibility *outside* the United States. While more freedom is good, the dichotomy here—law in the United States versus law abroad—creates an insidious complication for crafting a single global social media policy.

When an employer experienced with workplace social media domestically in the United States decides to extend a social media policy internationally, the organization carries along baggage maybe better left at home. A U.S. employer may approach a social-media-policy project conditioned to comply with unique principles under U.S. labor law that actually do not reach abroad.

Understand the dynamic here. Proactively decide whether to bifurcate a restrictive U.S. social media policy compliant with American labor law from a separate, tougher policy for workforces across the rest of the world.

The unique principle of American labor law at issue is the protection of "concerted activity" for employees' "mutual aid or protection," a legal rule under section 7 of the U.S. National Labor Relations Act that reaches most all American employers, unionized and non-unionized alike. This doctrine emerges from a statute that ostensibly gives workers a right to unionize—NLRA § 7 says:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other *concerted activities* for the purpose of collective bargaining or other *mutual aid or protection*…" (emphasis added).

This provision of the NLRA prohibits an employer from discriminating against activists trying to unionize. To that extent it is straightforward and non-controversial. Even management recognizes workers have a legal right to join trade unions—the International Labor Organization frames this as a fundamental *human* right. But this provision of the NLRA extends much farther and regulates a universe far bigger than the niche issue of expressly championing labor organizations. The NLRA statute forbids American employers—again, even non-unionized ones—from issuing any HR rule, including a social media policy, that might discourage employees from complaining about management, work conditions, benefits or pay. Under this provision of the NLRA, if some employer were to instruct American workers not to criticize, among themselves, their boss or their jobs or their pay rates, that instruction would be an unfair labor practice infringing "[e]mployees[']…right…to engage in…concerted activities for the purpose of…mutual aid or protection." In the United States, we call this an unlawful restriction on *protected concerted activities*.

Cases interpreting the NLRA are notoriously subject to oscillation over time, depending on which party occupies the White House. But federal courts and the U.S. federal agency that interprets labor law has taken a broad view of protected concerted activity. According to a 2018 U.S. Supreme Court opinion, "[s]ince the [Labor] Act's earliest days, the [Labor] Board and federal courts have understood § 7's 'concerted activities' clause to protect myriad ways in which employees may join together to advance their shared interests." (*Epic Systems Corp. v. Lewis*, 584 U.S. __ (2018) (Ginsburg, J., *dissenting on other grounds*). Specifically, over the years, NLRA § 7 has invalidated all sorts of work rules—even rules worded so they do not to appear to address overt criticism of management, jobs or compensation.

Even a *confidentiality* rule might violate the NLRA, if it prevents workers from telling colleagues confidential information about pay rates and company HR practices; after all, any such confidentiality rule might chill workers wanting to "engage in…concerted activities for the purpose of…mutual aid or protection" in an informed way. Similarly, a social media policy might violate the NLRA if it chills employees from using social media to communicate among themselves or with the public or customers and criticize their employer.

Explicating the reach of *domestic American* protected concerted activities law in the context of domestic American social media policies is a nuanced, always-evolving issue beyond the scope of our discussion here on *international* social media policies. (*See, e.g.,* NLRB General Counsel Memorandum OM 12-59 (5/30/12); William Beaumont Hospital, 363 NLRB No. 162 (4/13/16); *Boeing Company,* 365 NLRB No. 154 (12/14/17.) But speaking broadly, a domestic U.S. employer promulgating a domestic U.S. social media policy needs a strategy and a defensible position for why rules in its policy do not infringe on protected concerted activities. Protected concerted activities becomes an issue—possibly but not necessarily a full prohibition—as to rules in a U.S. social media policy purporting to restrict employee social media postings that are:

- *Complaints:* Posts that disparage or criticize the organization or that make negative, disparaging comments about mangers or co-workers
- *Aggressive:* Posts that are offensive, demeaning, abusive, inappropriate or "pick fights"
- *Inflammatory:* Posts that take inflammatory positions on political or social issues in a way that might hurt the company's image and integrity
- *Impolite:* Posts that fail to use a "professional tone" or are inappropriately "impede harmonious interactions and relationships"
- *False:* Posts that are false, misleading or inaccurate
- *Disclosures of confidential information:* Posts that reveal certain confidential, non-public company information including information about pay rates, benefits, human resources practices or personal information about co-workers and contingent staff
- *Violations of HR process:* Posts that broadcast HR complaints instead of channeling them internally to management or the HR team
- *Violations of copyright and rights of authorship:* Posts that use the employer's logo or intellectual property to criticize or disparage the organization

In addition, protected concerted activities might also raise issues as to a U.S. social media policy purporting to control workers':

- *"Friending":* Instructing staff which fellow employees not to "friend" or to link to on social media
- *Mandatory reporting/whistleblowing:* Requiring staff to report co-workers' violations of the social media policy, and to report any "unsolicited" or "inappropriate" electronic communications they receive

- *Speaking to reporters:* Prohibiting staff from speaking to reporters and traditional media about company-related issues even where the employee explains he has no authority to speak for the organization

Because the "protected concerted activities" doctrine is essentially unique to labor law in the United States—even Canada does not impose this rule—ensuring a social media policy complies with this particular doctrine is a domestic U.S. issue, not a concern abroad.

- *Contrast law abroad:* Consistent with U.S. NLRA § 7, other countries around the world also strictly prohibit management from discriminating against organized labor and labor organizing. Some countries even grant employee representatives full immunity from being fired. What is unique about American labor law is that NLRA § 7 extends its prohibition against labor-organization discrimination far beyond the niche issues of overt union organizing activity and protecting duly-elected employee representatives, and into countless scenarios entirely unrelated to unionization—even to protect workers who neither know nor care what a trade union is and who never mention organized labor.

  Having said that protected concerted activity is a non-issue under labor law in other countries, for *different* legal reasons (that we will discuss), a strict social media rule against disparagement, inflammatory positions, disclosing HR information and the like will not necessarily be enforceable in all contexts in all countries worldwide. The point is that a social media rule void stateside because of NLRA § 7 is not necessarily void in other countries—and certainly is not void in other countries on grounds of "protected concerted activity."

The protected concerted activity issue arises in two contexts as to global social media policies: (1) when a multinational *headquartered anywhere* tries to craft a single global social media policy to apply simultaneously both within and beyond the United States, and (2) when a *U.S.-headquartered* multinational tries to extend its domestic U.S. social media policy internationally.

As to the second context, the challenge is that protected concerted activity compliance has become part of the "DNA" of a well-drafted domestic U.S. social media policy. A multinational using a U.S.-compliant social media policy as a template or first draft for a global policy starts out with compromises or accommodations "baked into" the approach. For example, a compliant domestic U.S. social media policy probably lacks a robust rule against disparaging the employer on social media, and may lack a tough provision against stating inflammatory positions on social media.

- *Laws actually clash:* A U.S.-drafted social media policy that complies with the protected concerted activities doctrine will probably not forbid staff from disclosing information about their co-workers on social media. But requiring confidentiality of co-worker personal data can be a vital compliance step outside the United States (for example, under the European Union General Data Protection Regulation). On this particular point, laws actually clash: A provision in a social media policy requiring co-worker data confidentiality may actually be *illegal stateside but mandatory in Europe.* How can one global policy reconcile that conflict?

A multinational using a domestic U.S. social media policy as its starting point for a global policy should identify all the provisions—and identify all the *missing* provisions—in the U.S. version that reflect compromises or accommodations to comply with the NLRA. To export these compromised provisions into (and to continue to omit missing provisions from) a global version of a social media policy might have the U.S. "tail" wag the international "dog." Whether to export such a compromised U.S. approach depends on:

- what precise social media rules the multinational prefers to impose worldwide
- how drastically the organization had to compromise its preferred rules in its U.S. social media policy
- to what extent the U.S. is the multinational's workforce-demographic "center of gravity"
- the multinational's tolerance for issuing separate HR policies across different countries

A completely separate ramification of U.S. NLRA § 7 plays into global social media policies in a very different way, albeit more peripherally. This separate context is *no-solicitation clauses*. Today's social media policies often forbid workers from using company intranet social media platforms and chat functions to solicit for non-work-related causes like charities, community activities and selling personal property like Girl Scout cookies. Even a U.S. employer that does not object to workers using the company intranet for benign personal solicitations may nevertheless promulgate a broad no-solicitation rule as a *union avoidance* strategy, to be able to stop union activists from hijacking the company's own intranet to promote union drives. (A workplace policy singling out union-related solicitations would violate NLRA § 7, but a strictly-enforced rule against *all* personal solicitations may be held non-discriminatory.)

This dynamic differs overseas. Outside the United States, workers organize in very different ways. And labor/management cooperation works in very different ways. Overseas, in some jurisdictions union activists may not need company intranets for organization drives, while in other jurisdictions labor laws may in effect *require* employers to let worker representatives use company tech platforms to advance labor representation. The point is that the reason for a rule against personal solicitation on company intranets may drop out abroad. This particular provision may be unnecessary globally, and be best localized to the United States.

C. How Can a Multinational Control Workers' Off-Duty, Off-Premises "Free Speech" on Devices They Themselves Own?

Employment laws worldwide empower management to promulgate necessary and reasonable work rules that apply on-the-job, in the workplace, or that involve employer-owned equipment. The tricky aspect to a policy reining in worker *social media* activities is that, to be effective, the policy must reach off-duty, off-premises "free speech" on devices workers themselves own. We mentioned, for example, the California English professor who (presumably using her own device) tweeted political opinions unflattering to Barbara Bush. Even though that professor at the time was out on a semester-long sabbatical, her employer told news media that her tweets were a "personnel matter" triggering a disciplinary "review…involv[ing employer] lawyers [and] union representatives."

The fact that social media policies reach off-duty/off-premises conduct on worker-owned devices poses little challenge in the United States, because U.S. law under employment-at-will leaves employers largely free to discipline staff for most off-duty conduct. A century ago, a Detroit automaker famously dispatched teams of "Sociology Department" investigators to monitor factory workers' morality off-duty in their own homes, firing the ones who did not measure up. Today's employers are more laissez-faire, but employment-at-will still lets American management discipline workers for almost any non-discriminatory reason, including even off-duty activity. Most U.S. state statutes said to regulate discipline for "off-duty activities" actually insulate only one or two very specific off-duty activities like smoking and owning guns, leaving employers free to impose discipline for all *other* off-duty reasons; e.g.: 820 IL Comp. Stat. 40/9, 55/5; KY Rev. Stat. § 344.030; ME Rev. Stat. tit. 26, §§ 591, 597; MN Stat. §§ 179.01(3), 181.938; NJ Stat. § 34:6B-1; NY Labor Law § 201-d.

Of course, American employment-at-will law does not reach overseas. In most all other countries, bosses need *good cause* (essentially willful misconduct) to discipline or dismiss staff, at least without triggering severance pay. Off-duty conduct rarely counts as good cause. That means employment law abroad forbids, or strictly regulates, employers from disciplining staff for off-duty/off-premises conduct involving employees' own personal property—even misdeeds that are shocking or criminal.

Overseas, workers might believe that employment law in their country flatly prohibits employer discipline for off-duty/off-premises conduct. But these workers are wrong. Every country on Earth lets management legally fire staff for a number of off-duty/off-premises misdeeds—for example, off-duty/off-premises bribery, insider trading, antitrust collusion, trade secrets disclosure, intentional data breaches and embezzlement-by-computer-hacking. In Latin America and elsewhere, (e.g., Costa Rica Labor Code 2017 art. 78) labor codes expressly make off-duty criminal conviction for non-work-related offenses good cause for dismissal.

That said, these examples are exceptional and extreme. Outside the United States, dismissals for off-duty/off-premises legal conduct are rare and difficult to uphold. Again, overseas employers need "good cause"—essentially, proof of willful misconduct—to fire someone, and under foreign law, establishing "good cause" for an act occurring off-duty and off-premises is extremely hard to frame as "good cause," even if it violates an on-point company policy that purports to reach beyond the workplace. Outside employment-at-will, unreasonable work rules are void, and a work rule purporting to reach legal off-duty/off-premises conduct is susceptible to being held unreasonable and void.

Overlaid on this, overseas workers may believe their country's fundamental rights confer some sort of "freedom of speech" protecting them when they are off-duty and away from employer premises. Workers abroad tend to think "freedom of speech" under their local law applies even against their employers. In this, they may be right; the "state action" concept under American constitutional law—constitutional rights apply only as against the government—does not necessarily apply to fundamental rights in other countries.

For these reasons, a multinational trying to impose a social media policy globally bears a heavy burden to craft a rule enforceable worldwide against workers' off-duty/off-premises "free speech" internet activity using their own personal property. How can a multinational do that?

Surely the lead strategy is to link the legal off-duty/off-premises social media activity to the job. One way to do that is to articulate, and broadly define, a phrase like "Company-Affiliated Social Media Post"—and emphasize that workers themselves get to decide whether their social media feed is "Company-Affiliated." Under this approach, the social media policy document begins by assuring workers they are free to post whatever they want, as long as their posts are not Company-Affiliated and do not implicate the organization. The policy takes a "hands off" approach to all social media activity except where a worker affirmatively pulls in the employer. At that point the policy defines "Company-Affiliated Social Media Post" broadly enough to prohibit all social media activity the employer has a business reason to control. For example, a global social media policy could frame its reach as follows (but edited, shortened and reworded in the organization's corporate communications voice—the following provision exaggerates to highlight strategy and is not meant as model text for an actual policy):

> This policy does not reach your social media posts unless you decide to pull the Company in. We respect, protect and uphold your right to engage freely in all social media activity that is not Company-Affiliated. Say whatever you want, however you want to say it—but keep us out of it. Your personal social media feed is your business, not our business, as long as you do not implicate us.
>
> Whether this policy reaches any of your social media posts is up to you, not us. You control. You decide whether (or not) to opt into this policy by broadcasting a "Company-Affiliated Social Media Post" where you pull us into personal statements you broadcast on social media. It is usually best to leave us out.
>
> When you pull the Company into your public social media feed, your posts becomes job-related. Those posts must comply with this policy. If you choose to broadcast a Company-Affiliated Social Media Post—even if you post it off-duty and away from company premises on your own device—by doing that, you opt into this policy.
>
> "Company-Affiliated Social Media Posts" means all tweets, posts, blogs, chat-room messages, review-site reviews and other communications you broadcast on social media or the internet that:
>
> - you make while at work or during your work time
> - you make on Company-owned hardware—our equipment
> - you make (even if on your own personal time, off-site and using your own hardware) by posting something that:

- mentions the Company or Company business, Company employees, customers, suppliers or competitors, or
- reveals your Company affiliation
  - *Remember your bio:* If your bio on a social media platform reveals that you work for our Company, then all your activity on that platform constitutes Company-Affiliated Social Media Posts
  - Any social media post that "goes viral" in a way that links you to the Company is a Company-Affiliated Social Media Post

This approach may seem restrictive for employers, because it begins with a broad-sounding declaration of workers' right to post whatever they want on social media—and because it says workers themselves get to decide whether the social media policy even applies. Also, this provision makes it hard for an employer to discipline workers for broadcasting inflammatory social media posts that in no way implicate the employer organization—the employee whose social media page says, in essence *"I am a proud white supremacist"* without naming the employer.

But this approach probably defines "Company-Affiliated Social Media Posts" broadly enough to meet employer needs. In fact, this approach is so broad that it will not always be fully enforceable in all contexts in all countries. This approach might be a viable way to buttress an employer's position that its social media policy legitimately reaches worker off-duty/off-premises "free speech" worldwide.

D. Which Topics Should a Multinational Employer Account for in a Global Social Media Policy?

In drafting a human resources policy—even one to apply internationally—the inevitable temptation is to find a good template form somewhere else and just adapt it. But international social media policies are relatively new, many do not adequately account for international issues, and different multinationals take varying approaches to social media rules. Some companies just tuck a terse "social media" clause into a broader global code of conduct while others issue complex global social media policies that run for pages.

Rather than editing some other company's social media rule, perhaps a better way to craft a global social media policy is to tailor a strategy for each component of the policy. Consider which sub-topics to address and how to address each one, in the way that works best for the particular organization. Eight components or sub-topics can come into play when a multinational crafts a thorough global policy on staff use of social media:

1. **Define "social media" and articulate the organization's social media philosophy:** A global social media policy should begin by defining "social media" to include both public platforms and company intranet communication functionalities. Articulate a definition broad enough to anticipate future platforms.

   Then the policy should explain the employer's philosophy on controlling worker social media posts. Explain how the organization strikes its balance between respecting employee free speech and off-duty liberties versus safeguarding the company's confidential information, trade secrets, brand identity and reputation.
2. **Explain that the employer actually can control workers' off-duty/off-premises "free speech" on their own devices:** We mentioned that outside the United States, an employer social media policy is vulnerable to attack because it purports to control workers' off-duty/off-premises "free speech" on devices workers themselves own. Expect overseas employees to believe they have a legal right to say whatever they want on social media, at least as to their postings off-duty, off-premises on their own devices.

In "laying down the law" as to employee social media, a social media policy text should diplomatically explain that the employer actually can impose these rules. We analyzed how a multinational can prohibit at least some inappropriate work-related social media posts through the strategy of broadly defining "Company-Affiliated Social Media Posts." Regardless of whether a multinational embraces that particular strategy or selects a different approach, the text of the social media policy document should deftly send the message that yes, the employer can indeed control staff's off-duty/off-premises social media speech—even on their personal devices.

3. **List each category of forbidden social media post that triggers discipline:** A workplace social media policy must tell workers which categories of social media posts the employer forbids—what kinds of posts trigger discipline. After all, a statement that merely offers recommendations not subject to discipline is just a suggestion, not an enforceable policy, and a broad prohibition of all "inappropriate" behavior is so vague as to be unenforceable. But articulating a list of prohibited postings raises challenges:

   - *Specificity:* No one can predict what inappropriate posts workers will send in the future, but staff need to be on notice of what they cannot post. Precisely defining each category of forbidden social media post is impossible. A social media rule will inevitably be broad and vague, because it has to reach inappropriate social media postings the employer will not be able to anticipate when drafting the rule.

   - *Bifurcated policies:* As already discussed, certain restrictions on social media posts might be void under U.S. NLRA § 7's unique "protected concerted activity" doctrine. A multinational wanting to impose tough social media rules might decide to bifurcate a watered-down U.S.-compliant policy so it can be free to craft a tougher policy applicable across the rest of the world.

   In drafting a global social media policy, consider whether the multinational has a strong enough business case to prohibit posts that:

   - Criticize the employer
   - Broadcast HR grievances beyond the company HR department
   - Advocate for political positions
   - Take positions on hot-button social issues
   - Express extreme, fringe or inflammatory views or images that put the employer in a bad light by association
   - Lie or make false statements of fact, or show reckless disregard for the truth
   - Disparage competitors
   - Are "business-inappropriate" (if that can be defined)
   - Violate copyright and rights of authorship
   - Illegally promote company products (advertising laws in the United States and other jurisdictions regulate testimonials, for example when company employees tout their own product on a review site without disclosing their affiliation)

4. **Incorporate—without repeating or truncating—other relevant HR policies including those regarding *confidentiality:*** Employers cannot tolerate staff using social media platforms to leak confidential employer information, trade secrets, customer lists or internal HR data, to breach databases, or to violate omnibus data protection laws like the European Union General Data Protection Regulation. Therefore, many employer social media policies devote a lot of

text to the fundamental concern of confidentiality. For that matter, beyond confidentiality, employers cannot tolerate staff using social media platforms to violate data protection or intellectual property laws, to commit antitrust or insider trading violations, to bully, harass or discriminate—the list goes on.

The issue for drafting a workable global social media policy document is *repetition*, *redundancy and accuracy.* Any multinational issuing a global social media policy probably already has a full suite of rules, policies or code of conduct provisions on topics that rogue social media posts might breach—the organization's extant policies on confidentiality, data protection, IP compliance, antitrust, insider trading, bullying, harassment and discrimination. Social media is just another *context* in which a disobedient worker might violate existing work rules.

A social media policy document gets needlessly bloated if it repeats workplace policies already set out elsewhere (say, if it defines "confidential information" as thoroughly as that term gets defined in a stand-alone confidentiality policy). And a social media policy gets inaccurate if it truncates other workplace policies (say, if it abridges its definition of "confidential information" less thoroughly than the definition in a stand-alone confidentiality policy). To streamline a global social media policy document and to keep it accurate, simply have the policy incorporate, invoke, refer to, cross-reference or link to all other relevant policies and code provisions—without repeating or abridging them. This approach can even apply to the particularly-vital topic of *confidentiality*.

5. **Address contacts with traditional media:** Before social media ever existed, American employers issued succinct *traditional* media policies instructing staff not to talk to professional reporters about company business, but rather to refer any inquiries from news media over to the organization's public relations team. As the line blurs between news websites and social media, many employer social media policies address this issue. Some policies go farther and address speeches and articles—setting guidelines for employee public speakers and employee authors who self-identify as employed by (implicitly speaking on behalf of) the organization.
6. **Prohibit solicitation on the chat/social media feature of the internal company intranet:** We mentioned (above, section B) that American social media policies often forbid workers from using company intranet social media platforms and chat functions to solicit for non-work-related causes like charities, community activities and selling personal property like Girl Scout cookies—but that the reason for this particular prohibition might be unique to U.S. labor law, and so this rule might not be necessary to impose internationally.
7. **Impose *other* rules on workers using the internet and tech devices (beyond social media):** Beyond social media per se, consider related "employee computer use" topics involving internet access and tech devices. Many multinationals decide to address internet access and tech devices within the context of their social media policies—although these related topics are not strictly part of social media:

   - *Work-time personal computer use:* Many workers spend entire work days in front of internet-enabled computer screens. Management has a business need to restrict staff from spending too much work time on personal social media activity and "surfing the internet." In the international context, personal computer use during work time actually raises foreign regulatory issues under *telecommunications* law: In European jurisdictions including Germany, Italy and Poland, if an employer lets staff use the company network for occasional personal communications, the network can be deemed a regulated telecom provider.

   - *Work on emails, computers and mobile devices off-hours*: Laws in France and Germany now try to regulate off-hours work on emails, computers and mobile devices, and indeed off-hours remote work implicates overtime-pay exposure in all countries—so some employer policies impose rules here.

- *Inappropriate websites*: Employer policies forbid employees at work and on company equipment from accessing, in the workplace and on company-owned equipment, pornographic, racist and other inappropriate websites. The reason for these rules is obvious to Americans, but staff abroad may grumble that these restrictions are puritanical.

- *BYOD*: The inverse of rules on employee use of company-owned tech equipment is rules on *company* use of *employee-owned* equipment—"bring your own device," BYOD. The most powerful strategy for a cross-border BYOD policy is to keep BYOD genuinely optional. A multinational is far freer to impose binding cross-border BYOD rules when it can prove that each worker who has opted into the tough BYOD policy could have opted out, with absolutely no job repercussions.

8. **Require ex-employees update affiliations on social networks and continue to follow the social media policy:** Some employer social media policies contain a provision requiring that "offboarding" staff update their bios on LinkedIn and other sites to reflect they have left the organization. Some rules require updating social media bios on the final day worked (nudged by friendly reminders from a proactive HR team).

   Some social media policies purport to extend confidentiality and certain other social media rules to *ex-employees'* social media activity after separation. These rules might appear strict, but of course HR policies tend to be unenforceable after employment. Any organization with a business need to control ex-employees' social media activity should consider adding a social media clause to restrictive covenants, separation releases or non-disclosure agreements.

E. How, Logistically, Does a Multinational Launch an Enforceable Global Social Media Policy across Overseas Workforces?

Having discussed *drafting the text* of a global social media policy document, the focus turns to *launching that policy* across international workforces. Outside American-style employment-at-will, labor/employment laws can impose cumbersome steps on employers issuing new work rules that need to be binding and enforceable. Drafting any global HR policy text is merely "phase one" of a two-phase global policy project—"phase two" is launching the just-drafted policy in a way to make it stick, fully enforceable against staff worldwide.

But the same set of steps applies when launching most any global HR policy; these steps apply to a global social media policy but are not *specific* to social media. Therefore, analyzing the launch steps for a global HR policy generally is beyond the scope of our discussion here. That said, here is a quick checklist of the logistical steps for launching any global HR policy framed in the context of a global policy on social media:

1. *Number of versions:* Is one global social media policy document adequate? Are aligned local versions—or local riders to a broad global policy—necessary for each country? Do compromises accounting for the U.S. protected concerted activity doctrine compel bifurcating a U.S. from a global version?
2. *Communication, distribution and acknowledgement:* How will the organization distribute and communicate the global social media policy to all staff worldwide so that all workers can be shown to have received the policy as a binding new rule?
3. *Non-conforming documents:* Is there an earlier version of a company social media policy out there that now must get repealed? Have any local offices or subsidiaries issued their own statements or work rules on social media that now must get aligned? Have any overseas affiliates issued lists of local work rules that must get amended to reflect the organization's new rules on social media?
4. *Dual employer:* Is the headquarters entity inappropriately issuing the policy itself, acting as a co-/dual-/joint-employer setting terms/conditions of employment for staff employed by separate overseas affiliates? Or will local affiliates duly ratify the policy and impose it on their own workers?

5. *Collective consultation:* Will the new social media policy be a mandatory subject of bargaining or consultation with employees, collectively, overseas? Are local company-side labor negotiators ready to consult?
6. *Translation:* Should the social media policy get translated? Do "language laws" in affected jurisdictions require translation? (For example, there are local-HR-communication laws in Central America, Belgium, France, Mongolia, Quebec, Turkey and beyond.)
7. *Government filings:* Does the social media policy trigger laws that require filing certain HR policies with government agencies? Is affirmative approval of the policy from a government agency necessary? (For example, Costa Rica Labor Code 2017 article 67 requires government "prior approval" of "[a]ll work regulations.")
8. *Vested rights:* Might the new social media policy be argued illegally to infringe on "vested" free-speech rights that employees had enjoyed, until now? Must employees affirmatively waive those rights?
9. *Backstopping:* As to a multinational that is not issuing a new social media policy now—but, rather, already has one in place: Did the organization account for the above eight issues back when it originally rolled out its current social media policy? If not, how can it go back and fix past oversights now?

Conclusion

Social media has transformed society. And that includes interactions between employers and employees, interactions among co-workers, and staff interactions with the outside world. No organization can predict when its next employee with an agenda—or its latest ex-employee—will "go viral" with a post linking the company to controversial political positions, criticizing the business on an internet review site, chat room or blog, taunting a supervisor, harassing a subordinate, spreading rumors or lies about the brand, disparaging company products, launching a union drive, leaking trade secrets, or haplessly touting company products in a way that violates advertising laws.

In today's social media environment, more and more multinationals need a harmonized, global approach to reining in inappropriate employee social media activity. But multi-jurisdictional challenges arise as a multinational employer crafts, launches, implements and enforces its social media policy *across its worldwide operations.*

Global social media policy projects can get complex because they must comply with inconsistent laws worldwide while effectively reining in inappropriate employee social media postings. A workable cross-jurisdictional social media policy must resolve five issues: (1) whether a single global approach to an employee social media policy is appropriate, (2) whether to account for U.S. domestic labor law restrictions globally that only apply stateside, (3) how to control employee free speech off-duty, off-site and on employees' own tech equipment, (4) which topics a global social media policy should cover, and (5) what logistical steps are necessary to launch an enforceable social media policy worldwide.

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