Employers who fail to protect employees from a co-worker's racist, sexist or otherwise derogatory and defamatory comments on social media platforms can find themselves on the losing end of a workplace harassment lawsuit.

Case law on work-related cyber-harassment is evolving with the popularity of social media as a way for people to connect, communicate and commiserate, but one trend is clear: Courts expect employers to intervene immediately when they learn of workplace disputes spilling over onto social media, and the law increasingly considers online harassment and bullying just as egregious as the kind that happens obliquely or directly in an office or other physical job site.

Some courts have ruled that any work-related harassment is actionable even if conducted off the job on private equipment; it's not necessary for the attack to be perpetrated on work time using company property. In the eyes of the law, cyberspace is simply another place where one co-worker can engage in inappropriate conduct against another.

During a panel discussion sponsored by the Equal Employment Opportunity Commission in 2014, longtime District of Columbia civil rights attorney Lynne Bernabei noted that "even if employees post harassing or derogatory information about co-workers away from the workplace, … an employer may be liable for a hostile work environment if it was aware of the postings or if the harassing employee was using employer-owned devices or accounts."

In light of this, employers should inform employees that some off-duty speech might cost them their jobs and institute policies that cover:

Use of company equipment, time and resources. Company policy should prohibit employees from using company equipment and internet access to compose or post hostile content during and outside of work hours.

Libelous or otherwise inappropriate comments. Even when employees use their own computers, internet service, social media site and free time to post content, they should understand that making demeaning, discriminatory or otherwise hostile comments about co-workers, as well as customers and business rivals, is potentially actionable under sexual harassment, libel and other civil rights laws. The First Amendment protection against government suppression of free speech won't protect an offending employee from discipline any more than it would if the conduct occurred on company property. This is true even when the offensive speech is seen by a limited number of "friends" and subscribers.

Employee use of personal laptops, smartphones, or other technology on the job. Some industries expect workers to supply their own devices and use them at work. Laws against harassment still apply in such situations.

Misrepresenting company policy. Employees should be expected to conduct themselves professionally and respectfully on company blogs or websites and in interactions (electronic or otherwise) with the public, competitors and clients. While they can identify themselves as company employees, they should state that they speak only for themselves, not the business. Likewise, employees should not be allowed to use company logos or trademarks in personal correspondence and postings.

It's not up to the employer to monitor employee interactions, but once an aggrieved employee informs the boss of co-worker misconduct, it's the employer's job to correct the problem.

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