Progressive Discipline for Badmouthing the Company Online

QUESTION

*I work for the [*name omitted*]. One of our employees became disgruntled after her son was expelled from a school that, while not technically under the [*name omitted*] umbrella, is a sister institute. The employee has been posting negative comments about the school on Facebook. Even though she hasn't criticized the [*name omitted*], she did mention it one of her posts and acknowledged the possibility of getting fired for doing so.*

*We had previously talked to the employee about a different posting and she took it down. Her Principal then met with her in response to this recent post, i.e., the one mentioning the [*name omitted*]. But, so far at least, that post has not been taken down. We plan to meet with the employee and impose some kind of discipline, like a suspension for insubordination. Are we handling this the right way? And are there any legal implications that I need to be aware of?*

– Name withheld

[learn_more caption="**Answer**"]

I can't give you legal advice or tell you what to do next. But what I can do is walk you through the analysis you should conduct to make that decision yourself.

1. **Is Social Networking Grounds for Employee Discipline? YES [√]; NO [ ]**

Good news: You pass the first test. Although employment law has a long way to go to catch up with social networking, early cases have made it 100% clear that employers can, in fact, discipline employees for posting harmful things about the company, clients or employees on social network sites. Stated differently, social networks are not an employee's private domain, even if employees post after or away from work.

2. **Did the Employee's Postings Harm Your Company? YES [ ]; NO [ ]**

To constitute grounds for discipline, you must demonstrate that the employee's postings hurt the company or its reputation. It's not immediately clear in this case whether criticising a sister school crossed the line. To make that determination, you must consider factors like:

- What exactly the employee said;
- The tone in which she said it;
- The exact relationship between you and the sister school targeted for criticism—how in other words, the criticism harmed your own company; and
- The employee's position at the company—criticism is much more harmful if the employee is responsible for public relations or occupies a high position. (Example: Nunavut Tourism was justified to fire "Polar Penny," a marketing employee, for posting critical blogs about the city she was hired to promote.)

3. **Did the Employee's Postings Constitute Insolence? YES [ ]; NO [ ]**

Another theory you may be able to use to justify discipline is that the employee's postings constituted insolence or insubordination. The basic test for insolence is whether the employee's conduct is disrespectful and undermines the ability of management to direct the workforce. Again, I don't have enough information to judge if the employee's criticism of the sister school crossed the line—although her refusal to take the post down after being warned would probably constitute evidence of insolence.

4. **Do You Have a Social Networking Policy? YES [ ]; NO [ ]**

Your legal case will be much stronger if your company has implemented a written social networking/internet use policy that bans employees from criticizing the company, or in this case, its sister schools on Facebook, blogs, etc., and provides that violations can result in discipline.

5. **Do You Have a Progressive Discipline Procedure? YES [ ]; NO [ ]**

Answering YES to all of the above questions means you likely do have grounds for discipline. At that point, it becomes a matter of *how* you discipline the employee. The first step is to make sure you have a progressive discipline policy or procedure at your company and use it consistently to enforce your social networking and other HR policies.

6. **Are You Following Your Progressive Discipline Procedure? YES [ ]; NO [ ]**

As long as there is, in fact, a progressive discipline procedure in place, deciding what to do next should be pretty straightforward: Simply follow the procedure. It sounds like the employee has already received a warning. Accordingly, check your procedure to determine the appropriate penalty for employees who commit offences after a warning.

7. **Are You Documenting Your Actions? YES [ ]; NO [ ]**

Last but not least, be sure to make a written record documenting the disciplinary actions you take and how you decided to take them in case you get challenged in a grievance hearing or lawsuit.

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Good luck and I hope the above analysis helps you deal with your situation.

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