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DILWORTH PAXSON PROGRAM SOCIAL MEDIA @WORK: THE #BALANCINGACT BETWEEN EMPLOYER AND EMPLOYEE ENGAGES HR AND BUSINESS PROS, ATTORNEYS, AND THE PRESS

November 13, 2014

On November 12, Dilworth Paxson LLP hosted three of the top national enforcers of labor and employment laws for the engaging educational event ***Social Media @Work: The #BalancingAct Between Employer and Employee***. Geared to human resources professionals, business owners, and in-house counsel, the program drew a crowd to the National Constitution Center to hear valuable perspectives on managing social media in the workplace from U.S. Equal Employment Opportunity Commission and National Labor Relations Board leaders. Participants also followed the action on Twitter using #BalancingAct.

The distinguished panel included [Chai R. Feldblum](#), Commissioner, U.S. Equal Employment Opportunity Commission; [Richard F. Griffin, Jr.](#), General Counsel, National Labor Relations Board; and [Harry I. Johnson, III](#), Member, National Labor Relations Board. The hour-long discussion and audience Q&A were moderated by [Eric B. Meyer](#), Partner in Dilworth's Labor & Employment Practice Group, influential attorney on Twitter, and publisher of [The Employer Handbook](#)—voted the *ABA Journal's* top Labor & Employment Law Blog last year. During the program, Meyer unveiled Dilworth's new **#SocialMedia Practice Group**, a cross-section of attorneys spanning various existing practice groups who will be able to bring their collective experience to bear when assisting clients with a wide variety of social-media issues.

To start things off, Feldblum addressed Meyer's question regarding the interplay of employee social media use and the anti-discrimination laws that the EEOC is tasked with enforcing.

"It's not that the law is any different from what you [and] your clients have been applying, it's just in this different technological context," said Feldblum.

Piggybacking on Feldblum's comments, Griffin emphasized the breadth of the National Labor Relations Act, which is the law the Board enforces. He noted that the Act applies in essentially all private-sector workplaces, clarifying a misconception that the Act only protects unionized employees.

Discussing the implications of employee social media use under the Act, Johnson then focused on issues involving surveillance: <https://www.youtube.com/watch?v=Q0EEocEbJfM>

And Griffin hit the point home, noting that employers should be mindful of the difference between general monitoring for business security purposes and targeted surveillance of staff: <https://www.youtube.com/watch?v=-YdaNDM5yCs>



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One of the hot topics during the discussion involved the multiple legal issues that can arise when employers use social media to screen job applicants: <https://www.youtube.com/watch?v=348lkAkiTVI>

Meyer and Johnson offered some advice in regards to social media and hiring: https://www.youtube.com/watch?v=NHfNx_MYmDs

Feldblum also tackled the potential disparate impact that a focused social-media-only candidate search could have on protected classes who are less apt to use particular social networking platforms.

The panel agreed that there is no “off-the-clock” social media use—an especially important lesson for younger workers. “Social media is obviously not Las Vegas in terms of whatever happens there stays there,” quipped Johnson. Since social networking platforms such as Twitter and Facebook essentially document communication between individuals, these and other social media sites may end up providing a “transcript” that supports an accusation of discriminatory or hostile behavior. Feldblum emphasized that the use of social media is an opportunity to retrain people on what the basic rules are. Furthermore, noted Feldblum, “I don’t want us to lose the fact that social media can be an absolutely positive way of people connecting.”

Some key takeaways for employers:

- Develop clear and consistent social media policies and articulate those policies to employees.

- Train your managers about how to address employee social media use.

- Check out the EEOC’s Strategic Enforcement Plan, and stay current with both EEOC decisions and guidance on emerging workplace issues.

- Be on the lookout for NLRB action on joint employers and employee use of company email.

To watch the full program, click [here](#).

Press coverage of the event included the following:

[CBS/KYW Newsradio](#)

[Bloomberg Law](#)

[Law360](#)



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