**SOCIAL MEDIA POLICIES: WARNINGS AND SUGGESTIONS**

**Lorelei Lein, General Counsel**

**Alabama League of Municipalities**

In this day and age it’s fairly well established that public employees are going to access some form of social media in the course of their employment – either personally or professionally. This begs the question – “do we have a policy for that?” Perhaps the better question is “Do we need a policy for that?” Developing and implementing an effective social media policy for public employees is loaded with potential problems and before even considering the adoption of a policy, your city attorney should be consulted to evaluate First Amendment and privacy issues.

If your municipality determines it must have a social media policy, it should go beyond “play nice” and “don’t do post anything that would cause your mother to blush.” The process of developing a policy should begin by giving consideration to how social media will be used: *Official Use*, for the express purpose of communicating the municipality’s interests or *Personal Use*, for the personal interests unrelated to job duties for the municipality. If there is going to be official use of social media on behalf of your city, this is one area where a policy makes sense. A policy will provide guidance on things like: Who has authority to post content on social media on behalf of the city? Who has authority to remove posts on behalf of the city? What guidelines are in place for content posted?

First and foremost, a social media policy must make it clear to employees that they have no expectation of privacy or confidentiality when they use any public equipment including computers, tablets and cellphones. It should include language that the employer has the right to access and monitor its computers, equipment and systems without warning or any specific notice to the employee. Employees must understand that what they say and do on public equipment may be subject to disclosure and that the employer has the right to back up anything, even if deleted by the employee. Employees need to understand that this can include any personal emails sent using public equipment, even if they are encrypted.

As with any employee policy, it should be clear and understandable. It should include definitions broad enough to cover future expansion and include specific examples of devices covered by the policy (cell phones, computers, tablets, pagers, etc.) and make it clear that any device provided by the employer to the employee is intended to be covered by the policy. Along these same lines, a policy should include specific examples of social media channels and activities that are covered but, again, it should be worded to allow for other social media outlets which may come on the scene after adoption of your policy. Some other important considerations include:

* Encourage the use of good judgment and professionalism;
* Make it clear that other employment policies apply in the context of social media use (such as policies against discrimination and harassment, public records, IT access and use);
* Consider requiring a request for access to social media from employees who have official or professional need to utilize social media on behalf of the city.
* Specify who has final say over approval or removal of official social media postings.

Like other policies affecting employees, employers should provide training on any policy and the training should be mandatory. And perhaps most importantly, any policy should exercise the appropriate amount of control without appearing, in words or in practice, to go beyond the public employer’s legitimate interest. Public employees, unlike private employees, have First Amendment free speech rights and any policy adopted must take this into consideration if the employee is speaking on a matter of “public concern.”

Last, but not least, with regard to potential issues relating to the NLRA, a policy should have a savings clause relating to Section 7 protected activity such as:

“nothing in this policy will be interpreted or applied in a manner that interferes with employee rights to organize, form, join, or assist labor organizations, to bargain collectively through representatives of their choosing to the extent allowed by law, or to engage in other concerted activities for the purpose of addressing the terms and conditions of employment.”

While it might not completely save a policy should it be challenged, it is important to make the effort to alert employees that the social media policy is not attempting to restrict their rights.

**What’s the Bottom Line?**

The bottom line is that social media policies are loaded with danger for public employers and should be approached with extreme caution and care. Clearly city attorneys need to be involved in the development of any policy but it is also vitally important that upon adoption of a policy by a municipality, city attorneys MUST be consulted and involved in any enforcement issues relating to the policy. The totality of the circumstances surrounding the social media communication must be carefully evaluated before deciding on any action under the policy. The city attorney is in the best position to advise whether or not an employee has engaged in protected conduct or speech. And finally, it is vital, and cannot be over-emphasized, that enforcement of your social media policy must be consistent from one incident to the next.

**SAMPLE POLICY AND DISCLAIMER**

Still determined that your city needs a policy? Below is a proposed social media policy for municipalities. This sample is provided solely as an example and should not be used without consultation with legal counsel.  Please note that this sample policy or other information of whatever nature which are mentioned and included in this paper are not a substitute for obtaining legal advice for your municipality’s specific needs.  Users are advised that all materials must be updated and adapted to local needs and circumstances.  Use of this sample or advice is at the sole risk of the user. The Alabama League of Municipalities, its instrumentalities, and their staff disclaim any responsibility or liability which may arise or result from the use or implementation of all or any portion of the advice or materials included in this paper.