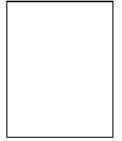


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Municipal Matters

Timely news in the area of municipal law

promotional material

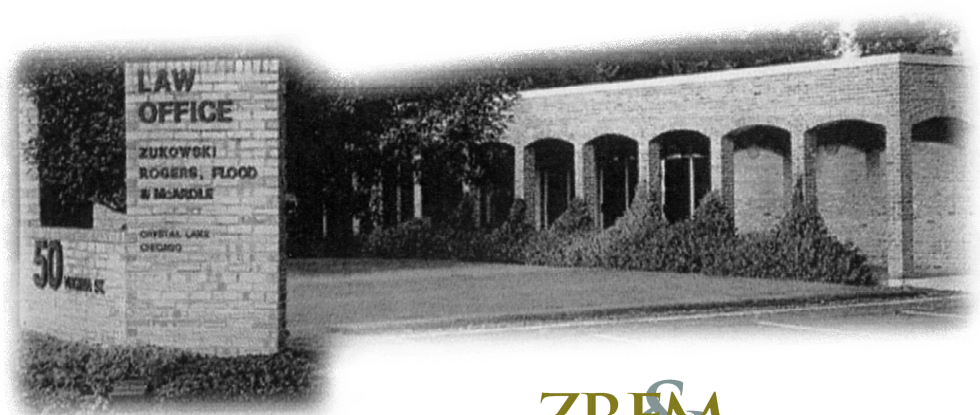
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Employers - Do You Have a Social Media Policy? If Not, Why Not?

By Kelly Cahill

Many employers see social media as a way to connect with their customers or to market themselves in an alternative way. However, as social media becomes more and more a way of life, we also see employee use of it spill over into the work place. Whether it is employees spending time on social websites rather than doing their work, to posting disparaging remarks about their employer or the residents in the community on "their own time", to actually harassing fellow employees with their postings or inappropriate texting, all employers should consider the impact social media has on their operation.

Consider the employee who has just had a run-in with one of your residents, vendors or even developers and posts a rant on Twitter as soon as that individual walks out the door. What about the police officer taking a video of an arrestee and posting it on YouTube or the building inspector who discloses information about a property in town on Facebook? Not to be overlooked is the employee who is sexually harassing a co-worker by sending inappropriate texts to her via the municipality issued phone or posting inappropriate pictures or comments regarding the employee on his personal Facebook page. What about the employee who is breaching the municipality's confidentiality policies via LinkedIn? These are just a few examples of why most employers need to start thinking about initiating a policy addressing their employees' use of social media including LinkedIn, Facebook, MySpace, Twitter and YouTube.

In *City of Ontario, California v. Quon*, decided just this past June, the United States Supreme Court upheld the Ontario, California, Police Department's discipline of one of its officers for inappropriate use of his city-issued pager that could also send and receive text messages. The police department had an informal policy of allowing its officers to use the pagers for personal use so long as the employees reimbursed the city. However, when the police department noticed that one of its officers had exceeded his texting allowance, the police department decided to review the officer's text messages and discovered that many were not work related and some

were sexually explicit. The officer was disciplined for improper use of the city pager. The officer sued, alleging that because there was an informal policy allowing officers to use the pagers for private use, the search of the text messages was illegal. The Supreme Court upheld the police department's search of the officer's messages, finding that the officer had no expectation of privacy in his city-issued paging device. Therefore the employer had a right to monitor the text messages being sent.

Thus, it is appropriate for an employer to address the use of social media and establish a "code of conduct" that is expected of employees in order to protect the employer's reputation and image and protect it from potential liability. A social media policy is one way to protect the employer. So what should such a social media policy include to protect the employer?

The policy needs to:

- Address the use of the municipality's equipment and prohibit personal and inappropriate use of the municipality's computers, telephones, cell phones and any other IT equipment;
- Put the employees on notice that the employer has the right to monitor the employee's use of this equipment and that the employee should have no expectation of privacy in any use of municipal equipment and cell phones, including messages sent, received or posted;
- Make it clear that employees can only use municipality equipment for purely business reasons with limited and appropriate exceptions. In other words, they should not be sitting at their desk all day updating their Facebook page or tweeting;
- Emphasize that employees may not use municipal equipment to access inappropriate websites such as pornographic or gambling sites;
- Clearly state that employees are bound by the municipality's harassment policies and that texting, emailing or posting inappropriate content about fellow employees is strictly prohibited, whether utilizing municipal OR personal equipment or cell phones;

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Welcome

In this issue, Kelly Cahill writes about the need for a Social Media Policy.

Carlos Arévalo, as a follow up to his Spring issue article, provides an update regarding the Public Safety Employee Benefits Act.

Also included in this issue are important dates from October 2010 to February 2011.

If you have any questions, comments, or suggestions for articles in upcoming issues, please contact us.

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Employers- Do You Have a Social Media Policy? If Not, Why Not? - continued from page 1

- Prohibit the use of social media that threaten, libels or slanders, defames or disparages or discriminates against any co-worker, supervisor, resident, vendor or supplier of the municipality;
- Prohibit disclosing or discussing confidential, work-related matters through social media;
- Clearly state that any employee posts on their own time, using their own personal sites, should not imply that they are speaking

on behalf of the municipality; and lastly

- Contain a clear and concise statement that any violation of the social media policy will lead to disciplinary action, up to and including termination of employment.

Social media is obviously here to stay and no one disputes that it can definitely be a helpful marketing tool. Just make sure you also have communicated with your employees the do's and don'ts of social media in the workplace.

A PSEBA Update

By Carlos S. Arévalo

Our Spring newsletter featured an article entitled *The Continuing Expansion of the Public Safety Employee Benefits Act*. This article addressed the evolution of this law and two court decisions within the last year that addressed whether an injury sustained during a training exercise gives rise to the benefits afforded by it. The Public Safety Employee Benefits Act ("PSEBA") provides that an employee who catastrophically injures himself in the course of responding to a fresh pursuit, responding to an emergency, responding to an unlawful act of another or during the investigation of a criminal act is entitled to receive health insurance benefits for himself and his dependents at the expense of his employer. The two decisions, which incidentally involved the same employer, were split as to the meaning of emergency such that the benefits would be triggered. On the one hand, the *Gaffney v. Orland Park Fire Protection District* decision found that an injury sustained during a training exercise involving a simulated fire was not an emergency. On the other hand, in *Lemmenes v. Orland Park Fire Protection District*, the court found that an injury during a simulated fire/training exercise was in response to an emergency and therefore warranted PSEBA benefits for the injured firefighter.

While the factual scenarios of each case were substantially identical, there was one critical difference. In *Gaffney*, the firefighter acknowledged that he understood the simulated fire was not a real emergency, but just a simulated training exercise. In *Lemmenes*, the firefighter, however, claimed that based upon instructions by command staff (the same given to *Gaffney*), he treated the simulated fire as if it were a real life emergency. It was this testimony that proved critical and *Lemmenes* was granted PSEBA benefits by the court. Because of the split, these cases are on appeal to the Supreme Court.

While this appeal is pending, the First District appellate court issued a decision regarding PSEBA on September 2, 2010. In *Oskroba v. The Village of Hoffman Estates*, the firefighter appealed a decision by the trial court that denied him and his spouse insurance coverage

under PSEBA. The firefighter had already received a line of duty disability so the primary issue before the court was his PSEBA claim. Like *Gaffney* and *Lemmenes*, this case also involved whether injuries occurred while responding to an "emergency". In this case, the injury took place while the firefighter was servicing a fire engine that had just returned from responding to a fire. He testified that the engine he was servicing was the only one in the station and that the closest station with an engine was 7 to 10 miles away. Because of the potential for another call, he believed he was "responding to an emergency" situation. He did concede, however, that no such call was pending when he was injured while servicing the engine. The fire chief testified that normal practice after a fire call was to service the engine by replacing a wet hose with a dry hose. Pursuant to protocol, if a call occurs while the engine is being serviced, it is deemed "temporarily out of service" and the call is assigned to the next closest station, which he stated was 4-1/2 miles away. Accordingly, the chief was of the opinion that there was no emergency. The court agreed with Hoffman Estates and found that the firefighter was not responding to an emergency.

In our opinion, the *Oskroba* court correctly applied the PSEBA factors. Rather than focusing on the subjective opinion of the firefighter, it examined the totality of the circumstances and found that the firefighter's beliefs that his injuries occurred during an emergency were not reasonable. More importantly, the court reaffirmed the concept that there is no automatic right of qualification to PSEBA benefits just because injuries are sustained while an employee is in the line of duty and receives a line of duty disability. As we noted in our Spring newsletter, protocols and procedures are critical. The response protocol in Hoffman Estates saved the day. We would again recommend command staff in police and fire departments to review their general orders, protocols and procedures to ensure uniform response to all scenarios, especially those that truly involve emergency situations. Doing so may indeed save the day.

Q's and A's of Municipal Government

Our municipal code prohibits political signs to be erected more than 30 days before an election and must be removed within 7 days after the election. In light of all the amendments to the Election Code this past year, are these regulations still enforceable for the next municipal election?

Among the zoning powers granted to the corporate authorities in 65 ILCS 5/11-13-1, paragraph (12) currently states:

“to establish local standards solely for the review of the exterior design of buildings and structures, excluding utility facilities and outdoor off-premises advertising signs, and designate a board or commission to implement the review process.”

However, Public Act 96-904, which becomes effective Jan. 1, 2011, amended paragraph (12) to add the following:

“except that, other than reasonable restrictions as to size, no home rule or non-home rule municipality may prohibit the display of outdoor political campaign signs on residential property during any period of time, the regulation of these signs being a power and function of the State and, therefore, this item (12) is a denial and limitation of concurrent home rule powers and functions under subsection (i) of Section 6 of Article VII of the Illinois Constitution.”

ZRFM Attorney News

Rich Flood, Ruth Schlossberg and Jenette Schwemler helped organize and lead a spirited presentation on the Illinois Open Meetings Act and Freedom of Information Act in the Internet Age at the 2010 Illinois Municipal League Annual Meeting on September 24, 2010. They were joined on the panel by Aaron Scicluna of Verity Three who served as a technical advisor, Terry Pastika of the Citizen's Advocacy Center and Sara Gallagher of the Illinois Attorney General's Public Access Counselor's office. Their wide-ranging discussion explored numerous theoretical and practical issues raised by technology and communication including texting, emailing and discussion boards and their implications under the Illinois Sunshine laws. The next morning, Rich and Ruth were joined by Kelly Cahill as the three led IML program participants through Zukowski Rogers Flood and McArdle's original "Municipal Tune-Up" program designed to ensure participants remain compliant with the huge volume of regulatory and legal requirements imposed on municipal governments. Both programs were well received by the audience. If you are interested in hosting similar presentations for your Board or staff, please get in touch with Ruth Schlossberg at 815-459-2050 to arrange a meeting.

Carlos Arévalo conducted a presentation at the Stateline Society for Human Resource Management General Meeting on October 14, 2010. He was joined by Janelle Crowley, Director of Human Resources for the City of Woodstock, and Jason Riney, Employment Specialist with Special Education District of McHenry County. The presentation addressed the Americans with Disabilities Act as employers continue to express concern about accommodation costs, and in some instances, a fear of hiring available candidates with disabilities.

David McArdle was featured in the *Leading Lawyers Magazine – Business Edition for 2010*. The story discusses his extensive Construction, Real Estate, Land Use, Zoning and Municipal

Dates to Remember:

Oct. 1: Last day to file a certified copy of any ordinance or resolution imposing or discontinuing a retailer's occupation tax (or home rule sales tax), or changing the rate, with the Dept. of Revenue to take effect Jan. 1.

Oct. 31: If your fiscal year started May 1, the municipal treasurer should have filed an annual account of moneys received and expenditures incurred during the preceding fiscal year with the municipal clerk. The clerk is required to publish the annual account if your population exceeds 500. (If your fiscal year started Jan. 1, the deadline is June 30.)

Nov. 2: Assuming terms of office begin May 1, 2011, for council/board members, and there will be change in compensation for those newly elected officials, the change must be made no later than Nov. 2 (180 days before the beginning of the terms).

Nov. 25 & 26: The law offices of Zukowski, Rogers, Flood & McArdle are closed in observance of the Thanksgiving holiday.

Dec. 13-20: Filing period for candidates in the April 5, 2011, consolidated election.

In anticipation of the December 28 deadline for filing a certified copy of your tax levy ordinance with the county clerk, the Truth in Taxation Law requires that not less than 20 days prior to the adoption of the tax levy ordinance the corporate authorities are required to determine the amounts of money estimated to be necessary to be raised by property taxes. We recommend a resolution be passed that contains the total estimated taxes that are anticipated, the total sum that was extended for the previous tax year and the percent of increase between the figures.

December (or sooner): If the total levy is more than 105% of the amount of property taxes extended for the previous tax year, plus any amount abated prior to the extension, a "Truth in Taxation" hearing is required before the levy is approved. A public notice, in substantially the form found in 35 ILCS 200/18-80, must be published not more than 14 days nor less than 7 days prior to the public hearing.

Before Jan. 1: For units using the calendar year instead of fiscal year a schedule of all regular meetings for the coming year should be prepared and posted. The schedule, which should also include the time and place of the meetings, be given to all news media that have requested it (as well as notice of any special, rescheduled or reconvened meeting).

Jan. 18, 2011: Last day for a governing body to pass a resolution or place referenda on the April 5, 2011, consolidated election.

Before Jan. 31, 2011: Certificates stating there have been no change in the ownership or use of property that is exempt from property taxes must be filed with the county clerk.

Feb. 1: The chief administrative officer, or designee, of a unit of government, is required to certify to the county clerk the names and mailing addresses of those persons required to file statements of economic interest pursuant to the Illinois Governmental Ethics Act.

experience. <http://www.zrfmlaw.com/news/dave-mcardle-featured-in-leading-lawyers-magazine-business-edition-for-2010>

Ryan Farrell was selected as one of the top 10 business people under 40 years of age in the August McHenry County Business Journal. <http://www.zrfmlaw.com/news/by-any-number-farrell-is-a-winner>

We also welcome Timothy ("TJ") Clifton, who just received news he passed the bar exam. TJ is a graduate of University of Illinois, Class of 2007 and DePaul Law School, Class of 2010. Prior to going to law school, TJ was a summer intern with ZRFM. We are happy to have him.