Legal Impact of Social Media on Municipal Operations and Litigation

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Overview

- Issues for employers to consider
- Legal implications of social media policies
- Employer actions against employees based on social media activity
- Legal obligation to preserve social media
- Exposure for elected officials when using social media
- Hypothetical situations and recent case law

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Issues for Employers to Consider

- Social Medial Policies – helpful or harmful?
- Employee comments – attributed to municipality or supervisor
- Ability to discipline
- Impact on hiring – fair game?
- Are your social media accounts public speech?
- Impact on policy making
- What is discoverable?

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What should municipal employers be aware of?

- Free speech
- Privacy
- Public reaction
- Potential labor violations
- Union concerns
- Litigation impact
- FOIL issues

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Legal Principles

- Free Speech – First Amendment
  - When is an employees speech in the workplace protected by the First Amendment
- Privacy – Fourth Amendment
  - What are the privacy considerations that need to be explored?
- Public Speech – Due Process Violations
  - When does social media become a public forum?

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Social Media Policy Considerations

- Should you have a policy?
- What can be in the policy?
- Impermissible policy terms
- NLRB v. Taylor Law

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Implications of Social Media for Discipline Purposes

- Is the employee speaking as a citizen?
- Is the speech related to a matter of public concern?
- If a public employee speaks as a citizen on a matter of public concern, courts will ask whether the government's interest in promoting the efficiency of public services outweigh the employee's interest (and the public's interest) in the speech.
- Disciplining without examining these matters could expose a municipality to litigation.

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Legal Obligations

- What is a litigation hold?
- Duty to Preserve
  - What do you need to save?
  - Whose material are you required to save?
  - How do you preserve?
- Discovering social media content

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What is Discoverable?

- Relevant to litigation
- Information publicly viewable
- Reasonable expectation of privacy

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Is Your Social Media Account a Public Forum?

- As an elected official
  - Can you block someone from your social media accounts?
  - Can you delete posts?
  - When is your account an instrument of the municipality?
    - What are the implications if the Court determines "yes, it is an instrument."
  - Recent case law

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Questions and Answers

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