





By Eric Brown, Esq.  
Siana Bellwoar

# Best Practices for Creating an Effective Social Media Policy

The importance of social media policies has been highlighted by news stories about the conduct of employees that show even good employees sometimes post unprofessional or offensive comments.

Does your municipality have a Facebook page? Instagram? Twitter? Do your employees use social media off duty? Likely, the answer to one of these questions is “yes.” If so, an issue will likely arise that will require prompt action to avoid a public relations controversy and to protect the municipality’s reputation.

What should a social media policy include? A social media policy should regulate social media platforms sponsored by the municipality as well as the personal usage of social media by employees, even when the usage is off duty.

There are two integral components to a social media policy.

The first should regulate the way municipal-sponsored social media sites are administered. Specifically, the policy should:

- Identify the social media platform(s) that the municipality has elected to utilize.
- Identify the individual responsible for administering the site(s) and monitoring content.
- Identify the person(s) possessing the authority to post or convey comments on behalf of the borough.
- Require the administrator to maintain a central database of all user names and passwords necessary to operate the social media platforms.
- Regulate the content of the communication. Unauthorized or inappropriate commentary

or posts can expose a municipality to legal trouble, as such comments may arguably be imputed to the borough. Unsuitable comments also risk creating negative publicity. Such comments may also generate hostility and distrust among co-workers or between supervisors and subordinates.

- Retain records generated during administering social media sites to ensure compliance with the Right-to-Know Act.

The second component should regulate the manner in which employees utilize their personal social media while on or off duty. Specifically, the policy should prohibit employees from:

- Representing themselves as agents of the municipality.

*continues on page 28...*



including operating “unofficial” sites of the municipality.

- Utilizing logos of the municipality without pre-approval.
- Publishing or disseminating confidential and proprietary information of the municipality.
- Posting racially insensitive remarks, sexual or graphic comments, personal attacks, and comments that promote or foster discrimination.
- Identifying him- or herself as an employee of the municipality and not making it clear that the views and opinions expressed are that of an individual and not those of the municipality.

## Employee Rights

A social media policy may not prohibit speech by and between employees about the terms and conditions of employment.

Employees have a right to discuss conditions in the workplace and express their feelings about management even when these opinions may be unflattering. Social media policies that are overly restrictive have been deemed unlawful by the National Labor Relations Board. This rule applies regardless of whether the work force is unionized.

## The First Amendment

The First Amendment poses a special concern to municipalities seeking to regulate comments

and messages made by both the public and public employees on social media platforms.

The First Amendment protects comments made on matters of public concern. Therefore, as a rule, a municipality may not censure comments posted by the general public on social media sites sponsored by the municipality. Likewise, public employees are limited in their ability to regulate employee expression on matters of public concern.

Protected speech includes comments conveyed or posted about political issues and candidates as well as comments addressing social issues like gun control, LGBTQ rights, government corruption, etc.

Courts have created an exception to this general rule.

Public employers have the right to regulate comments or posts when (and only when) the government has an identifiable interest that must be protected, and this interest outweighs the employee’s right to free speech.

A municipality should, therefore, identify the governmental interest(s) in support of any limitations the policy imposes on the content of comments or posts made by the public or public employees. Any restrictions placed on social media commentary or posts that involve a matter of public concern must be content-neutral.

In other words, if political comments in favor of a position or candidate are permitted, then comments in opposition of a position or candidate must also be permitted.

In the event a municipality begins to delete or remove commentary from its social media sites that has been posted by public employees or citizens, the municipality may be exposed to a First Amendment claim, if the social media policy is not properly drafted.

That means, a social media policy may serve as a first line of defense to any litigation filed by an employee or citizen. Likewise, any discipline imposed on an employee who violates the policy may be at risk for reversal if the policy is not consistently enforced.

To mitigate this risk, a municipality should clearly and unambiguously establish the governmental interests in limiting speech that may otherwise be protected by the First Amendment. Only when the stated governmental interests outweigh the public employee’s right to free speech will a court sanction a social media policy’s limitation on free speech.

Valid governmental interests that have been recognized by the courts include:

- promoting efficiency,
- preventing disruption to employer operations by, for example, interfering with and

*Public employers have the right to regulate comments or posts when (and only when) the government has an identifiable interest that must be protected, and this interest outweighs the employee's right to free speech.*



impairing operations and discipline, and

- protecting working relationships.

Police and fire departments have a particularly strong interest in the promotion of camaraderie and efficiency as well as internal harmony and trust. Courts have permitted regulations to protect a department's reputation in the eyes of the public as well as to retain the confidence of the public.

Courts have accorded substantial weight to a department's interest in limiting dissension and discord by permitting prohibitions against discriminatory or racially insensitive posts made by employees on their personal social

media sites. Courts have found such offensive speech to frustrate an agency's public safety mission and threaten community trust.

The more the employee's job requires public contact, the greater the state's interest in firing her/him for expression that offends her/his employer.

Comments that smack of insubordination or harm the public's trust concerning an employee or department's ability to make fair and impartial decisions may also trigger the municipality's interest in regulating personal use of social media.

A social media policy requires careful legal review prior to adoption, in light of the risks

associated with regulating off-duty, personal usage of social media by public employees.

To ensure that your municipality can quickly and efficiently respond to offensive and improper comments posted on social media and that your actions will withstand judicial scrutiny, a social media policy must contain clear and unambiguous guidance to employees.

**About the author:** Eric Brown, Esq., is an attorney at Siana Bellwoar. He practices in the areas of municipal law, labor and employment law, civil rights, public official and police liability, land use and zoning, election law, and school law. Visit [www.sianalaw.com](http://www.sianalaw.com) to learn more. 