



# JW techlaw e-Alert

An important technology law update from the law firm of Jackson Walker.

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## Is it Time to Create a Social Media Policy? *Employee Online Postings May Create Liability for Unwary Employers*

By [Stephanie Chandler](#) and [Shannon Zmud Teicher](#)

The Federal Trade Commission ("FTC") recently issued a new set of revised guides ("Guides") relating to endorsements and testimonials that may impose liability on businesses for statements employees post on personal blogs and social networking sites, such as MySpace, Facebook, LinkedIn and Twitter. What's more - there is potential for liability even when the employer has no knowledge of its employee's statements.

Specifically, the revised FTC Guides assess the application of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45) to the use of endorsements and testimonials in advertisements circulated within social media and other contexts. In particular, the Guides expand disclosure requirements relating to "material connections" between advertisers and endorsers by requiring that any connection between an endorser and the seller of a product that "might materially affect the weight or credibility of the endorsement (i.e., the connection is not reasonably expected by the audience)" must be fully disclosed (16 CFR §255.5).

Here, the concern for employer liability arises when an employee comments on the employer's products or services on the employee's personal blog or social network pages. For example, the Guides set forth the situation in which an employee posts comments promoting her employer's products to an online message board without disclosing her employment status. In this context, liability could potentially arise under two separate contexts: (1) for any false or misleading statements in the employee's online posts; or (2) for the employee's failure to disclose the employment relationship - even when the statements are otherwise truthful.

In published comments to the Guides, the FTC refused to set forth explicit procedures for employers to follow. However, the FTC did recognize that "the establishment of appropriate procedures would warrant consideration in its decision" in whether or not to pursue an enforcement action. Moreover, the FTC commented that it was unaware "of any instance in which an enforcement action was brought against a company for the actions of a single 'rogue' employee who violated established company policy that adequately covered the conduct in question."

Thus, the clear take-away for employers is that proactive measures to adopt clear, written procedures on social media and blogging policies may reduce exposure for employee statements. Effective policies should educate employees on the types of statements that require disclosure, prohibit false and misleading employee statements, require that employee endorsements be submitted to management or marketing for approval prior to posting and provide for response measures when violations occur. Additionally, well written policies can work to address exposure under other applicable laws, such as those related to disclosures by public companies under Regulation FD and the protection of company trade secrets.

If you have questions regarding this e-alert, believe its time for your company to adopt a social media policy or would like to have your current policies reviewed, please contact [Stephanie Chandler](mailto:schandler@jw.com) at [schandler@jw.com](mailto:schandler@jw.com) or [Shannon Zmud Teicher](mailto:steicher@jw.com) at [steicher@jw.com](mailto:steicher@jw.com).

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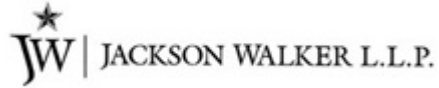
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