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Employers (and Employees) Beware *Defamatory statements on the internet can be actionable in a court of law*

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Social media is big and getting bigger by the minute. Although this form of communication is new, the risk of defamation liability to employers and employees is as old as pen and parchment.

To their employers' lament, many employees think that their comments on the internet are immune from defamation, or that couching a statement as an opinion will protect them. These are myths. People can be liable for defamatory statements made on social media, and purported opinions can be actionable.

The point is employers can be liable for defamatory statements made by their employees, no matter the vehicle of communication. As long as the statement was made within the scope of employment, the employer need not even know about it, and the statement need not have been made for the benefit of the employer. Whether an employee was acting within his scope of employment involves the employee's intent; the nature, time and place of the employee's conduct; the precise work the employee was hired to do; the incidental acts the employer should reasonably have expected the employee to perform; the degree of freedom allowed the employee in performing his or her duties; and, the amount of time consumed in the personal activity.

In one case, the court found the employer vicariously liable for the employee's actions because the employee was salaried; he was given authority by the employer to conduct a solicitation campaign as he saw fit; and he employed others to assist him, with their salaries and expenses being paid by the employer.

Whether a so-called opinion is actionable, depends on whether the facts supporting the opinion are implied or express, and whether those facts are correct and complete. For example, the statement, "I think Jones is an alcoholic," is an expression of opinion based on implied facts. If there is no such factual basis for the assertion, then the statement is actionable, even though phrased in terms of an opinion.

A statement that discloses all the facts on which the opinion is based does not imply there are other, unstated facts. For example: "I think Jones is an alcoholic, because he moved in six months ago, and I have seen him during that time only twice, in his backyard around 5:30, seated in a deck chair with a drink in his hand." In this case, the opinion is actionable only if the disclosed facts are false.

Courts have found "opinions" expressed through social media are actionable, and employers and employees need to understand that the internet is no safe haven for defamatory statements.

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