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BLOGS

Archives; Contracts & Agreements; Social Media & Technology

Social Media Job Updates: The Footprints in the Snow Showing Customer Solicitation?

In this era of hyper self-promotion and cyber networking, through the wonders of social media, former employees are commonly creating some of the most incriminating evidence establishing their violation of non-compete and non-solicitation agreements. When employees switch jobs, they now frequently broadcast that changed status to all of their contacts through social media platforms, such as LinkedIn and Facebook. Among those contacts, however, may be a significant number of customers or clients of their now former employer. If the employees previously signed employment agreements containing non-compete and/or non-solicitation provisions, these social media announcement blasts may be unlawful and land the employees into some hot water. Or is this just harmless social chitchat?

This issue is yet another one where employers lack a clear and consistent answer in the eyes of the law. Courts around the country have looked differently on this question, with some equating this activity to be the cyber equivalent of an employee stealing his employer-created rolodex (if you are too young to be familiar with this term, please Google rolodex). Other judges, however, have seen this action as allowable and harmless. For example, a couple of fairly recent [cases](#) coming out of courts in Massachusetts concluded that this type of electronic networking was fair game for employees even those who had signed enforceable non-compete and non-solicitation agreements (beware that not all states allow such agreements).

Ultimately, the answer as to whether restrictive promises in an employment agreement may effectively limit social media activity by a former employee will often times come down to as with most questions about employment contracts the actual wording of the employment agreement at issue. So, this is yet another reminder that if an employment agreement, including non-compete, non-solicitation, and/or confidentiality agreements, is deemed worth having by an employer, it is worth putting some careful thought into how it is written. As always, the more specific, the better.

An additional take-away here for employers is to underscore the importance of policing the important restrictions you have decided are worth including in your employment agreements. It is pretty easy these days to locate this type of social media activity by your former employees and to thus monitor, to some degree, their contact with your customers. If that social media activity crosses the line, swift legal action should be considered. Employers should also give some thought as to how they want their employees to promote their work experience out in the cyber-world and consider adopting employment policies on this topic. That social media advertising, after all, also reflects on your company.