

Adam Forman Quoted in "Can—or Should—HR Fire an Employee Because of a Social Media Post?"

HR Dive

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Adam S. Forman, Member of the Firm in the Employment, Labor & Workforce Management practice, in the firm's Detroit and Chicago offices, was quoted in *HR Dive*, in "Can—or Should—HR Fire an Employee Because of a Social Media Post?" by Pamela DeLoatch.

Following is an excerpt:

It's Monday morning, and the first email of the day contains a screenshot of a disparaging tweet that an employee wrote about her supervisor over the weekend. Or maybe it's a link to a video on TikTok that shows an employee cursing up a storm while drunk over the weekend. Perhaps it's a Facebook post from a supervisor that is extremely political and very negative. What are the next steps for the HR professional on the receiving end of the email?

In years past, if an employee ranted about a colleague or supervisor, took part in R-rated off-duty behavior or made controversial statements, only those in the room where it happened would know what went down. But today, in the age of social media, written words, pictures and videos can travel far beyond an individual's personal account, creating career-threatening consequences. But when can — and when can't — HR safely take adverse employment actions for this activity? ...

These dilemmas become more prevalent now that people who grew up with social media are entering the workforce, with every past tweet potentially exposed, Adam Forman, labor and

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employment attorney at Epstein Becker Green, told *HR Dive*. A blanket disqualification of candidates or employees because of past social media behavior could cause recruiting and retention issues, he said: "You're going to have to discharge everybody or rethink what kind of conduct is sufficient to enforce adverse employment action." ...

But employers, namely those in the public sector, are sometimes limited. In 2013, a federal appeals court ruled against a Virginia sheriff who fired his deputy because the deputy liked the Facebook page of the sheriff's political opponent. And state laws can add an additional layer to consider, Forman noted: "In the state of North Carolina, you cannot discipline an employee for lawfully consuming tobacco. If I'm on social media and smoking a cigarette, and my employer has a healthy workplace and doesn't want employees to smoke cigarettes, that may be problematic to discipline." ...

As employers try to quell problems arising from employees' social media posts, some companies try to monitor or filter social media, Forman said. He added that in many states, employers cannot ask for the login name or password for an employee's personal account. Other companies try to address problems on a case-by-case basis, but this can lead to inconsistent decisions or discipline, he said. ...

Once the company creates the policy, ensure employees are trained by incorporating the information during onboarding as well as in subsequent workshops, Forman said.