

Maxine Neuhauser, Susan Gross Sholinsky Quoted in Article, "Ownership of Social Media Accounts Should Be Clarified in Agreements"

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Maxine Neuhauser, a Member of the Firm in the Labor and Employment and Health Care and Life Sciences practices, in the Newark office, and **Susan Gross Sholinsky**, a Member of the Firm in the Labor and Employment practice, in the New York office, were quoted in an article titled "Ownership of Social Media Accounts Should Be Clarified in Agreements," written by Allen Smith.

Following is an excerpt:

A policy providing that an employer owns certain social media accounts used by employees might not be enough to prove ownership, management attorneys caution.

Employers instead should consider requiring employees to sign agreements recognizing that the employer owns the accounts, according to Sholinsky and Neuhauser. ?...

"Whether an account is a 'company' account or a 'personal' account will often depend on a variety of circumstances," agreed Sholinsky and Neuhauser. "Although written policies and agreements can go a long way to make the gray area smaller, they cannot eliminate it altogether or offer absolute protection to an employer."

They cautioned that "If, for example, a company hires a sales representative who already has a 'following' on Twitter under the handle @Susan, and upon hire she simply changes her handle to

People



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@XYZ_company_Susan, when Susan leaves the company it will be difficult for XYZ company to argue that her Twitter followers are the company's proprietary property." ?...

Sholinsky and Neuhauser cautioned that "Many employers still tend to think of their client lists as residing on a 'rolodex' and believe that the new clients and contacts an employee made during the course of employment are protectable company property because the employee may not take his/her rolodex when he/she leaves."

But they noted that "Social media, such as LinkedIn, provides employees with their own lists of friends and contacts that reside outside the employer's premises and data storage. These sites—which are public—become, in effect, the open barn door."

"In addition, many employers believe that they can, and are entitled to, monitor and control what their employees say on social media," they added. "While an employer may exercise a measure of control through employment policies, crafting such policies with too broad a brush may run afoul of the National Labor Relations Act and give rise to other claims such as discrimination and invasion of privacy."

"On the other hand, employers also have a tendency to think that what happens outside of the company stays outside the company," they concluded. "Where, however, an employee alleges discriminatory harassment, the employee's and his/her co-worker's postings on social media will often become relevant. This is increasingly true as the lines between business hours and personal time become ever more blurred."