



Legal news & views

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Social Networking and the Workplace

Michelle Tessier, Esq.
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As social networking continues to play an increasingly larger role in our society, it comes as no great surprise that these networks are beginning to pose a threat to both employers and employees. Although these sites, such as Facebook, Twitter, and MySpace provide an excellent chance for employers and employees to cast out information to a wider audience, this benefit comes with a price. Because social networking sites have so quickly infused themselves in our society, it is unlikely that these benefits and dangers will be leaving us anytime soon. Instead, it is essential that both employers and employees become well-versed in the challenges faced by these programs so that the workplace may embrace these changes while avoiding potential negative consequences.

How Does Social Networking Impact the Employment Arena?

Some of the more prominent themes presented by social networking that should be kept in mind are:

- 1) Obtaining Information the Employer Does Not Want to Know

Although one of the main benefits of social networking is the ability to market

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Stay "Posted" On Facebook's Impact On Employment Law

By Kimberly A. Alley, Esq.

The first ruling on the unlawfulness of firing employees because of their Facebook comments was issued by a National Labor Relations Board Administrative Law Judge ("ALJ") on September 2, 2011. In *Hispanics United of Buffalo, Inc.*, 3-CA-27872, the ALJ held that a non-profit

one- self by infusing personal information into the web, information that is sensitive or protected may lead to a responsibility by the employer to handle this information properly. Because of the large number of Federal Acts associated with discrimination, accessing information on a potential employee's sexual orientation, handicaps, and other protected information may lead to an employee claiming discrimination further on down the road. An employer would be wise to re-visit its policy regarding obtaining information about an employee or prospective employee to address whether it has the appropriate safeguards in place to avoid liability.

2) Privacy Issues

Searching social networks can invariably lead to an employer discovering information that may be considered private. Because most employees think that what they do at home on the computer is their private business, it is possible that discovering and/or acting on this information may lead to a claim of invasion of privacy. Although there is discussion regarding whether information posted on a publicly available site comes with an expectation of privacy, the fact is that acting on this information may lead to a potential claim, regardless of whether the employer did anything wrong.

3) Employers Monitoring Employees Use at Work

There are many issues that arise from employees using social networking sites during work time. Issues include, but are not limited to, employer liability for employee's conduct on these sites, policies related to proprietary issues, and reading and acting on negative comments about their work. These issues pose new questions to employers and employees about computer use in the workplace.

What Can Employers and Employees Do to Minimize Risk?

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Stand Your Ground

Eric B Goldberg Esq.

Abutters often pose the greatest obstacle to residential and commercial development. Complaints take many forms, ranging from aesthetic concerns; density, massing and intensity of use; environmental and safety concerns, including traffic, drainage, noise, and access; and diminished property value. However, when faced with neighborhood discontent, property owners and developers should be prepared to challenge the complaining abutter's standing before the zoning board. Although anyone can seek enforcement of the zoning bylaws, not everyone has the legal right to challenge a zoning board's grant of relief. Zoning boards will often leave the question of standing for the courts to decide on appeal, but it is well within the Board's authority to resolve the question of standing at the permitting stage.

Under the Massachusetts Zoning Enabling Statute, General Laws Chapter 40A, § 7, "a person in writing may request a building inspector to enforce the zoning by-law and is entitled to a written response. The person need not be aggrieved. To go beyond that stage, if the request for enforcement is rejected, a party must be aggrieved." *Green v. Board of Appeals of Provincetown*, 404 Mass.

organization's termination of five employees for their Facebook criticisms of a co-worker was an unlawful violation of the terminated employees' protected right to engage in "concerted activities." The ALJ concluded that the employees' Facebook comments, which were posted during non-work hours and in response to the co-worker's criticism of their job performances, did not form a lawful termination basis because the postings were the employees' first step toward taking group action to defend themselves against job related accusations. Although this decision is limited in its scope and application, it marks the beginning of emerging Facebook related decisions impacting the workplace. Employers will need to keep "posted" on the inevitable effect that Facebook and other social media has on developing employment law.



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571, 573 (1989). Thus, "[o]nly a person aggrieved by a decision of the building inspector may appeal to the board of appeals." *Id.* at 572; G.L. c. 40A, § 8.

Direct abutters, and abutters to abutters within 300 feet of the applicant's property, enjoy a presumption of aggrieved person status, but that presumption is rebuttable. *Barvenik v. Board of Aldermen of Newton*, 33 Mass. App. Ct. 129, 131 (1992). An abutter is a "person aggrieved" if he suffers some infringement of his legal rights. *Id.* The injury must be more than speculative. *Id.* "If standing is challenged, the jurisdictional question is decided on all the evidence with no benefit to the [abutter] from the presumption." *Id.* Once standing is adequately challenged on appeal, "the plaintiff must put forth credible evidence to substantiate his allegations, and the question of standing then becomes a question of fact for the trial judge." *Denneny v. Board of Appeals of Seekonk*, 59 Mass. App. Ct. 208, 212 (2003).

Satisfaction of that burden requires proof that the complaining property owner is one of the limited class of individuals who are entitled to challenge a zoning board's exercise of discretion. To qualify for that limited class, the property owner must establish - by direct facts and not by speculative personal opinion - that his injury is special and different from the concerns of the rest of the community. He must show that his legal rights have been, or likely will be, infringed or his property interests adversely affected. Subjective and unspecific fears about the possible impairment of aesthetics or neighborhood appearance, incompatible architectural styles, the diminishment of close neighborhood feeling, or the loss of open or natural space are all considered insufficient bases for aggrievement under Massachusetts law.

Standing typically is first challenged as a defense to an abutter's appeal from the grant of zoning relief. Indeed, zoning boards often avoid addressing a neighbor's standing during the permitting stage, but owners and developers should consider raising the issue of standing as a threshold question for the board's determination. Only a person who is "aggrieved" has the legal authority (i.e. standing) to appeal from a zoning decision. It necessarily follows that only a person who is aggrieved has standing to influence the board's decision making on an application for zoning relief.

in Boston, MA was recently selected by his peers for inclusion in the 2012 edition of *The Best Lawyers in America (R)*. This marks the fourth straight year that Mr. Kenney has been listed in this prestigious publication.

Since its inception in 1983, *Best Lawyers* has become universally regarded as the definitive guide to legal excellence. In fact, *Corporate Counsel* magazine has called *Best Lawyers* "the most respected referral list of attorneys in practice."

Mike Sams Appointed

Mike Sams of Kenney & Sams, P.C. was recently appointed to the Board of Directors for Massachusetts Continuing Legal Education.