

The latest legal issue regarding social media use in the workplace is that of employee versus employer 'ownership' of company social media accounts. Find out why this issue is coming up, how 'ownership' may be determined when there is a dispute and what employees and employers can do to avoid litigation in this interview with Renee Jackson, Labor & Employment attorney at global law firm Nixon Peabody LLP.

As an employment lawyer, **Renee Jackson** has gained particular renown for her cutting-edge technology and social media practice. She is a widely published author, commentator, and speaker on the topic of social media and has been at the forefront of monitoring how these trends in business impact both employers and employees.

Q: It appears the latest trending topic regarding social media use in the workplace has to do with who owns certain social media accounts, including the Twitter followers, Facebook fans, or other contacts that come with them. How does this social media account 'ownership' issue between employers and employees usually come up?

Renee: It generally arises when an employee is hired specifically to manage a company's social media presence, expected to promote the company's brand in social media or comes into employment already having a significant professional or industry social media presence. Upon the employee's separation from employment, the company and the individual dispute who 'owns' the various social media accounts and the contacts that come with them. Often times, the former employee leaves his or her employment as the only person who knows the login information for the accounts and the employer is left without the ability to access them.

This issue hasn't received much media attention, but is hugely important, especially for industries or companies that use social media as part of their marketing platform. In addition, in a time where workforces are more transient, it becomes even more important for employers to protect their social media assets.

Q: Why is ownership of social media accounts so important?

Renee: Twitter followers, Facebook fans, and LinkedIn connections are customers, potential customers, or other valuable contacts, and gaining a direct line of communication to these people is the point of using social media in the first place. The time and money spent growing a following, promoting a brand, developing an industry niche or expertise, and sharing content is invaluable and cannot be recouped easily. The line between a personal and professional social media account can be blurry, so if this ownership issue is not hashed out at the beginning of employment, the employer and the employee may both believe the account is theirs. As you can imagine, litigation arises out of this grey area.



Q: If there is a dispute over who owns the social media accounts, how can ownership be determined?

Renee: Litigation over these 'ownership' issues is in its infancy and is happening as a patchwork at the state level. Employers are suing for trade secret protection of these social media accounts and contacts, and also alleging common law theories of misappropriation or conversion against former employees for taking these contacts or the passwords to the accounts upon separation. Former employees are also using the misappropriation and conversion theories to sue their former employers.

Q: What are your recommendations regarding ways to avoid litigation?

Renee: It is in both the employer's and the employee's best interest to consider these issues at the beginning of employment – neither party wants to litigate these disputes. Of course, I generally represent employers and I counsel them to be vigilant about protecting their social media brand and assets.

Management should set up the accounts (using the company name in the handle or account name), maintain the passwords, only give access to those who need it as part of their job duties, and direct the content. The employer must communicate to the employee that it owns the accounts and the content, and that contributing content is part of the employee's job duties. This can be done by incorporating specific language regarding these duties and the ownership of social media accounts and contacts into offer letters, job descriptions, confidentiality agreements, separation agreements, and non-competition or non-solicitation agreements.

If the employee is starting a new job and wants to keep his or her professional or industry social media presence separate from the company's, the employer and employee should discuss whether and how the company will be referenced. Being clear from the beginning of the employment relationship can be crucial to avoiding later disputes and litigation over who owns a particular social media account and the contacts associated with it.

Lisa's Summary: Social media continues to increase in importance as a way to promote company brands and interact with customers. Employers should work with company lawyers, HR, and marketing to clearly define how social media accounts will be handled, so as to protect them just like any other valuable company asset. On the flip side, new employees should discuss ownership of social media accounts at the beginning of their employment, especially if they already have a personal social media account and following in the same industry. Up front conversations and clarifications on social media account ownership are a lot better than costly litigation down the road.

