I spy with my little eye…
Where to draw the line when monitoring an employee’s personal social media accounts.

During my senior year in high school I had a teacher that gave out class awards defining the people she thought we would one day become. I was given the award of “Most Likely to Say Something.” At one point in my life I may have taken that as a compliment if it weren’t for the fact that a classmate who I had tied for the top grade in the class received “Most Likely to Say Something Intelligent.” A fine yet meaningful distinction.

Two takeaways from this story; 1. I am lucky that this was just before the dawn of widespread social media use, 2. Even if meant as a joke, there were clearly learning lessons to take with me throughout my life.

Now more than ever, employers are wanting to monitor not only their employees’ social media use at work, but also any potentially harmful things they may be saying about their company once they clock out.

I continue to be amazed at the amount of detrimental information people put online for the world to see. Being married to an insurance defense lawyer that routinely hires investigators to uncover insurance fraud, I can safely say that Facebook has an infinite amount of candidates to pass on the “Most Likely to Say Something” award to.

Asking for log-in information. I get it... You want to know who you are about to hire or what your most gossipy employee is telling their 538 followers on Twitter. Resist the urge to ask for username or passwords of current or prospective employee social media accounts. Nearly half the states now have laws on the books to protect such acts by employers.

Here’s where WBMA member states stand:

**WA:** [RCW 49.44.200](#) An employer cannot require any employee or prospective employee to submit password or other related account information in order to gain access to an individual’s personal social networking account. This includes asking the employee to log-in to their account in the presence of the employer. Forcing an employee to add a company or an individual to your group of friends is also prohibited.

**OR:** [659A.330](#) It is unlawful for an employer to require or request access to an employee or applicant’s personal social media account, or compel the addition of the employer to an employee’s list of contacts associated with a social media site. It also prohibits employers from retaliating based on an employee or applicant’s refusal to disclose or provide access to such accounts. Oregon has added an amendment upholding the right for an employee to not have to have a social media account.

**MT:** [H.B. 343](#) Prohibits employers from requiring or requesting that a current or prospective-employee: disclose a username or password to his or her personal social media account; access a personal social media account; access a personal social media account in the presence of the employer; or

*continued on page 2*
divulge any information contained on personal social media. Employers may not take adverse action against a current or prospective employee for refusing to engage in such activity.

*Monitoring an employee’s social media account.* As you are well aware, it doesn’t just take an employee calling their boss a jerk to do damage. Harm can come in other forms such as HR issues arising from online spats between co-workers, and company secrets (albeit few in this industry) can be divulged.

Here are a few do’s and don’ts to keep in mind when deciding how best to implement your company’s social media policy:

**DO:**

- Keep state and federally protected privacy rights in mind.
- Make the focus on training employees on what type of conduct is permitted.
- Prohibit employees from representing the company online without clear authorization to do so.
- Make it clear you own company social media accounts at the onset.
- Stay consistent in how you enforce your social media policy.
- Have policies that make it clear that work computers are not private.

**DON’T:**

- Have overly broad social media policies.
- Discipline for off duty activities, unless you are sure the law permits it. Prying too deep may be subject you to liability for invasion of privacy.
- Ask employees to promote the company on personal accounts.

*Exceptions.* Most of the states that have adopted these new laws still allow an employer to ask for certain information including account credentials when engaging in things such as an employer investigation. Make sure to familiarize yourself with the particular rule(s) in your state.

*Have Questions?* That’s what the WBMA is here for. Give us a call, we are happy to help.

---

### Upcoming Events:

**Building Material Marketing Course**

October 20-21, 2015
Kincaid Learning Center – Olympia, WA

**WBMA’s Annual Convention**

November 3-5, 2015
Tulalip Resort – Marysville, WA

**Intro to Building Material Sales**

November 16, 2015
Valley River Inn – Eugene, OR

**Estimating Workshop**

November 17-18, 2015
Valley River Inn – Eugene, OR

**Tulalip Hotel Deadline:**

WBMA's hotel reservation deadline is approaching fast. In order to secure WBMA's $149/night room rate at the Tulalip Resort for our Annual Convention, you must make your reservations by next Thursday, October 8th. Tulalip Resort 1-360-716-6000

Note: We still welcome convention registrations after the 8th, we simply cannot guarantee the WBMA hotel rate.

Visit us on the web at: [www.wbma.org](http://www.wbma.org)
Minimum Wage Changes…

Washington no longer #1 in 2016.

Washington State Department of Labor & Industries just announced that the state minimum wage will remain unchanged for 2016 at $9.47 an hour. WA has had the highest minimum wage in the country for years but will be forgoing this title next year as California and Massachusetts will increase their respective minimum wages to $10.00/hr.

Where the other WBMA member states stand:

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>$8.75/hr</td>
<td>$9.75/hr</td>
</tr>
<tr>
<td>Idaho</td>
<td>$7.25/hr</td>
<td>-</td>
</tr>
<tr>
<td>Oregon</td>
<td>$9.25/hr</td>
<td>tba</td>
</tr>
<tr>
<td>Montana</td>
<td>$8.05/hr*</td>
<td>tba</td>
</tr>
</tbody>
</table>

*$4/hr for companies with less than $110,000 in annual sales.

October Reminder…

Starting the beginning of this month, merchants are supposed to start using the new credit card terminals which accept the new computer chip embedded cards.

Haven't yet? Good news is that you are not alone. Only 27% of merchants are estimated to have made the change as of the 1st of October. The bad news is that your exposure to liability as a result of fraud has greatly increased. Check out June’s issue of the Lumber Lawyerly where we discuss this topic in greater detail.

Quote of the Month…

“Failed plans should not be interpreted as a failed vision. Visions don't change, they are only refined. Plans rarely stay the same, and are scrapped or adjusted as needed. Be stubborn about the vision, but flexible with your plan.”

John C. Maxwell

About the Author/Disclaimer:
Tom Rider is Manager of Member Services for the Western Building Material Association. He is committed to being a valued resource to its members particularly on regulatory compliance issues affecting building material suppliers. Unless stated otherwise, this regulatory newsletter is written by him. He is a lawyer, but respectfully he is not your lawyer (unless you have been in his office and signed a contract). This communication is not intended as legal advice, and no attorney client relationship results merely by reading it. Please consult your own attorney for legal advice. If you are a WBMA member and would like to contact Tom with questions and/or comments: tom@wbma.org