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To Post or Not to Post: Employee Rights and Social Media.

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Abstract:

In line with the theme of this year's APSA conference, this paper examines issues of public employee rights as they relate to social media policies. This paper employs an interdisciplinary approach to examine the issue of employee rights in relationship to social media actions both on and off the job. The proliferation of the use and forms of social media in the last five years has been extensive. Significant efforts are being made to capture the power of this medium as a resource for government while at the same time governments are struggling to create appropriate, legal, and meaningful policies related to employee usage and behavior. Stories abound of public employees' misuse of social media both at and away from work. Misconduct has led to not just disciplinary action but substantial media attention. Issues of First and Fourth Amendment rights, human resource policies, and technology policies are all critical to this topic.

This paper reviews social media policies for public employees with attention to the employees' rights. Content analysis of state government policies provide an overview of the current state of practice and highlight issues of public employee rights. The paper includes a discussion of key issues of employee rights, recommendations for practice, and future research needs.

Introduction

Issues of employee conduct related to social media sites are filling the courts, media articles, and water cooler conversations. The issue of employee conduct on- and off-duty is not a new concern but this new medium is offering additional challenges and new twists on old challenges. Recent news stories about employee rights and social media use include tales of misconduct, coupled with concerns about legal rights. For example, in Savannah, Georgia, a female firefighter was terminated due to personal photographs placed on her private MySpace page. The Chief contended that the firefighter was using her role as a Savannah firefighter to “promote herself as a model for other personal publicity reasons”, which violated departmental policy (SavannahNow.com, June 13, 2009). The court upheld the termination and denied the firefighter’s claims of discrimination and First Amendment protection. In another case, a Staten Island HR manager was fired due to falsely claiming to be serving jury duty, while her Facebook status indicated she was on vacation in Baltimore (New York Post, November 5, 2010). Beyond losing her job, she was also charged with jury duty summons forgery, arrested, and faces up to fourteen years in prison for her crime.

The aforementioned examples speak to a range of issues, including First Amendment rights, Fourth Amendment rights, conduct policies, and discipline and termination practices. At the same time, the use of social media for employers of all kinds is being promoted and greatly lauded. The benefits to citizen participation, transparency, accountability, and customer service are pushing governments to adopt the use of social media, making it a part of the work expectation for some employees (Mengles, 2010). Employee challenges for managing both professional work related use of social media and personal off-duty use of social media are plentiful.

The recruitment, development, and management of the human capital in organizations are more important than ever. To effectively undertake this, HR professionals must balance the legal, cultural, and value considerations in helping the organization achieve its strategic objectives (Pynes, 2009). Social media tools, practices, and abuses are creating additional challenges within all workplaces. This new medium does not change the nature of employees' rights, conduct or expectation but it does change the medium, the reach, the speed and the permanency of their actions.

The proliferation of social media forms and use has been unprecedented (Lenhart, Purcell, Smith, and Zickuhr, 2010). Many organizations are still trying to determine how and if they will address these issues within their policies. While policies may act to restrict the specific behaviors and conduct of employees, they also provides for clarity of what is permitted, what consequences can be expected, and what protections are in place. Much of the previous research has focused on how to design policies that protect the employer (Cohen and Cohen, 2007). Little research has focused on the question from the perspective of the employee. While the two interests, employer and employee interests, should not be mutually exclusive, it is important to understand how these policies are impacting those for whom they are written. This paper examines the issue of how social media policies at the state level are designed and structured, specifically relating to the impact on the rights of employees working in state governments in the United States. This paper makes several contributions to the HRM literature, the IT literature, and employment law. The analysis allows for an investigation into the standards for social media policies based on current practice, case law, and strategic management choices. The analysis and recommendations are made with careful consideration to the tensions that are

present in this emerging area for both employers' and employees' rights, behaviors, and effectiveness.

First, a review of literature on social media is provided. Then, a review of the two key areas of employee legal rights most often discussed in relation to social media are presented: First and Fourth Amendment protections. The unique nature of requirements on public sector employee conduct is also reviewed. This section is followed by a discussion of the methodology. Finally, the results and a set of future research recommendations conclude the article.

Literature Review

Social Media

The use of social media by both individuals and organizations for personal and professional reasons has been at the center of much attention. Facebook is consistently viewed as the leader among social media engagement tools and recent metrics solidify its utility and importance in the lives of individual and organizational users. Current estimates place the number of Facebook users over 750 million people, with over 51% percent of all Internet-using people 12 and older in the United States having a Facebook account (Facebook, 2011). With over half of the American population participating on Facebook, the platform offers governments a unique opportunity to efficiently engage and inform citizens in lean economic times (Grossman, 2010). Governments have been capitalizing on the opportunity for citizen communication and connection offered by the social media outlets. In fact, a recent study conducted by Stateline.org indicates that 47 of the 50 US Governors have a social media presence for official governmental communications, particularly Facebook pages and Twitter accounts (Mahling, 2011).

The preponderance of social media literature is related to promotion or risk of use in government or its broadening appeal (Bertot and Jaeger, 2010). There is limited research related to social media policies, with respect to governmental policies and few empirically based studies. This paper offers a substantial contribution to the expanding field of social media research. Beyond broadening the knowledge base surrounding governmental social media policy, this paper also speaks specifically to the issues related to employee rights, an often-overlooked but critically important component of social media policy formulation and application. The following section will highlight major trends and literature with respect to public employee rights.

Public Employee Rights

Employee rights, as defined in this research, include a broad operational construct including legal bases, such as First and Fourth Amendment rights, on-duty acceptable conduct, and off-duty acceptable conduct. Harassment and discrimination are also included in the operational framework, as they are critical issues within the traditional employee rights literature (Rowan 2000). This research is also specifically targeted toward public sector employees' rights, which have some variation from comparable issues in the private sector (Allred, 1999). For individuals working in the private sector, these issues may still be present but the implications are different, particularly related to highly rights related to workplace freedom of expression and a much greater ability for employers' to regulate employee behavior (Cohen and Cohen, 2007). However, many private sector firms are recognizing that they need to be thoughtful on what they allow and not allow in terms of employees social media involvement, especially as they work to recruit and retain the next generation of workers.

Public employers differ in how they work to balance their responsibilities in both the employer-employee and government-citizen relationships. The issue that people most often refer to with social media and employees is the right to freedom of speech. When considering the distinction between private employment and public employment, First Amendment rights mark a key distinction. A private employer does not have a responsibility to respect an employee's First Amendment rights (with a few exceptions such as concerted speech related to working conditions or speech related to policy violations including discrimination or harassment). With few exceptions, private employers have the right to tell people not to talk about issues or not to undertake practices. For example, many private sector firms have opted to restrict what types of information individuals post about the employing organization and many actively monitor multiple electronic mediums to determine what people are saying though recent National Labor Relation Board actions have raised questions about what restrictions are permitted (Gordon, 2011).

First Amendment and Public Sector Employees

In the public sector employees have a different expectation of free speech.¹ General First Amendment protection in the public sector applies for speech at work and away from work and applies to spoken speech and speech that is disseminated in other forms of communication; the form of speech is not legally relevant. There is a three-prong test for determining if something that a public employee's speech is covered under the First Amendment (i.e. freedom of speech) (McLaughlin, 2010). First, the speech must touch on a matter of public concern. This is traditionally called the Pickering test, as it arose from *Pickering v. Board of Education*. Second,

¹ For first amendment issues the status of the employee matters, at-will employment compared to other classifications. There are several mechanisms that impact employees standing in terms of their rights. Collective bargaining units, statutory or ordinance protections, and individual employment contract can influence the qualification for rights under the first amendment for public employees.

the speech must fall outside of the employee's job duties, per *Garcetti v. Ceballos*. Third, the employee's interest in free speech must outweigh the government's interest in efficient/effective provision of services.

In recent cases related to social media and public employees, there have been two significant trends related to this balancing test. If an employee is posting on a personal Facebook account while at work about matters of public concern, then it is likely that the courts would find such speech more disruptive (and likely unprotected) compared to if an employee posted from home during non-work hours (Nolo, 2011). Additionally, the more involved in policy issues an employee is, the more the government's interest will override the employee's First Amendment rights. Finally, while the balance is different, the structure of the law is the same regardless of on-duty or off-duty status.

Fourth Amendment and Public Sector Employees

Public employees also have an expectation of protection under the Fourth Amendment that is distinct from private employee protections. Government employees have a protection against intrusion when there is a legitimate expectation of privacy and protection against unreasonable searches and seizures. An expectation of privacy can extend to computers, electronic devices, stored communication, etc., by virtue of allowing password protections, and the like. However, employers can remove an expectation of privacy by creating and consistently applying policies on the issue of privacy, such as routinely reminding employees that their use of email or other electronic forms of communication are subject to monitoring and no expectation of privacy exists (Tabak and Smith, 2005). *Quon v. City of Ontario* further strengthened the government employer's right to limit or remove expectations of privacy with the use of disclaimers, policies indicating monitoring or no right to privacy, etc. Again, in cases around the

Fourth Amendment the courts employ a balancing test that looks at the employees' privacy rights compared to the importance of government interests, particularly the reasonableness of a search with respect to work-related purposes for said search or seizure. The issue of privacy is a central concern when it comes to employees use and conduct on social media.

Employee Rights: Conduct

Off-duty conduct was referenced in the discussion of constitutional rights that are afforded to public sector employees. Actions that are undertaken during off-duty time can have a direct impact on the employment relationship. In particular, when there is a nexus of conduct (Allred, 1999), or the connection between the behavior and the "efficiency of the public service" is called into question, the off-duty conduct becomes subject to regulation and inspection. In other words, does the violation affect the employee's ability to do the job for the employer? For example, if a police officer was arrested for DUI or a financial analyst was caught embezzling funds from their church, the behavior would cast dispersion upon the public trust of that employee in their official capacity. In the public safety arena, issues of conduct are often more extreme than for other employees with issues around "conduct unbecoming an officer" at the center of the concern. Through the establishment of codes of conduct, organizations are articulating the expectations for employees' behaviors as well as disciplinary and termination consequences.

Another area of concern is the misappropriation of public funds or the use of public resources for private gain. Public employees are seen as trustees of the public's funds and appropriate stewardship extends beyond responsible budgeting decisions into the actions and uses of public resources by public employees. Examples of form of disallowed conduct include taking state vehicles for joy rides, using government-owned telephones for extensive personal

calls, or conducting a private business over public computers and networks (Lewis and Gilman, 2005). In recent years, the misappropriation of public funds has become a major hot button, with tremendous scrutiny from citizen watch groups and media outlets alike.

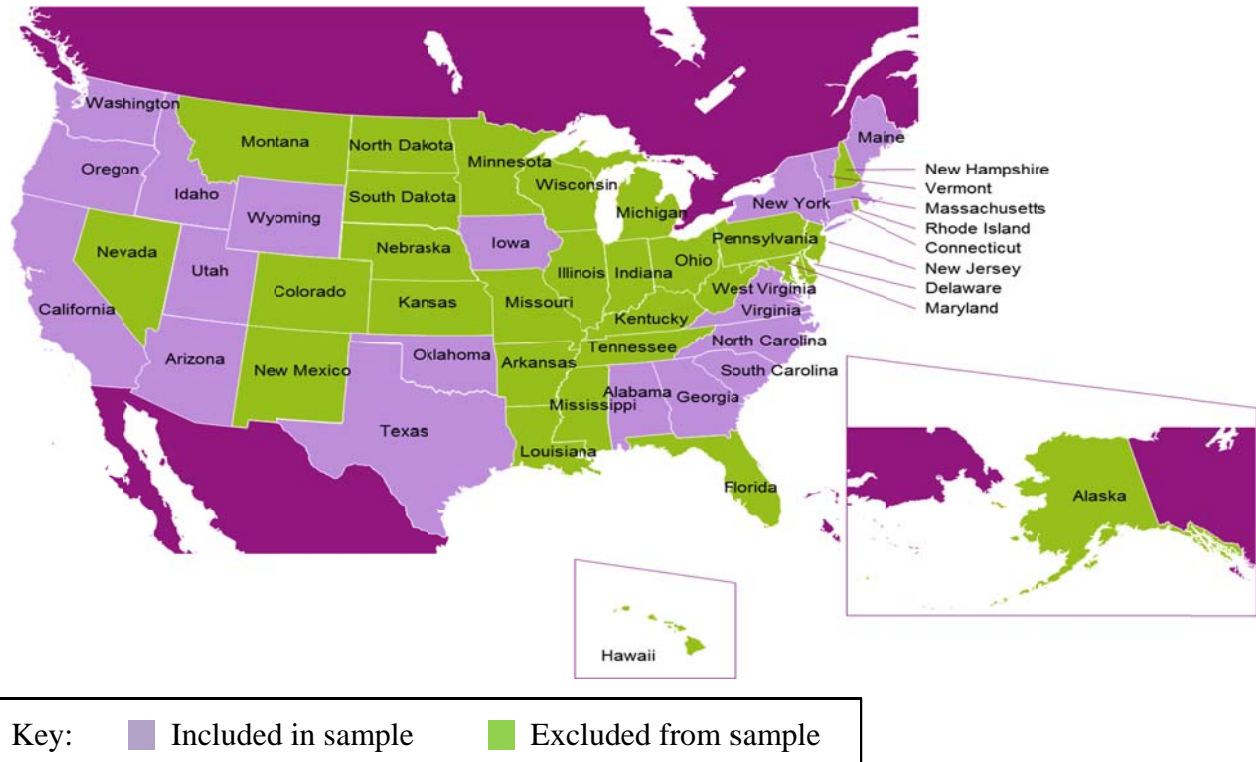
Employers are expected to create working environments that are safe and non-hostile (U.S. EEOC, 2011). To do this, there is an expectation of appropriate policies, reporting mechanisms and enforcement actions. Along with the increase of electronic communication mechanisms, there has been the associated increase of electronic harassment (Tyler, 2008; McMullen, 2011). Some of the harassment has been indirect, in the form of forwarded jokes or pictures, while others has been direct, in the form of cyber bullying and targeted harassment. Organizations need to consider how to build policies and practices that work to safeguard employees from these new emerging forms of harassment.

Methodology

This paper looks at the question of *How employee rights are impacted (both restricted and protected) by social media policies within state governments?* A content analysis of state government policies was conducted. Both policies and general guidelines were used (many states have guidelines or draft policies that have not yet been adopted as policies or statutes). In the data collection phase, it was observed that locating information about social media policies is a challenging undertaking, both in terms of where and how to get the data. Website sources searched include: 1. State IT; 2. Archives and history (Cultural resources), 3. HR; and, 4. Governor's office. When policies were not available on a state website the state CIO was contacted and the policies were requested (n=17). States were included in the sample if they had a social media policy, a social media guideline or a section of a larger policy (often these were within larger IT usage policies) that was dedicated to social media. Policies were excluded if

they had no direct treatment of social networking. Overall, twenty-three (23) of policies were included in the analysis. Those states with social media policies, guidelines, or social media specific sections are identified in Figure One (For a listing by name see Appendix Table 1A).

Figure One. Map of States with Social Media Policies Included in Sample



Within the sample, 43.5 percent of the documents were Social Media Guidelines, 47.8 percent were Social Media Policies, and 8.7 percent were social media specific sections of larger policies related to Information Technology. For clarity throughout this paper, all three types of documents reviewed are referred to as social media policies. Table One indicates the primary authors or owners of the social media policies or guidelines, with IT as the most common authors of these policies.

	Percent
Administrative Services	8.7%
Budget and Control	4.3%
Cultural Resources	4.3%

Finance	4.3%
Governor	4.3%
HR	4.3%
IT	65.2%
IT/Marketing	4.3%

Policies were imported and analyzed using the qualitative data analysis software QSR NVivo (Version 9). The data analysis process included both deductive and inductive approaches and was conducted in several phases. Coding definitions were developed in order to ensure consistent usage. The policies of each state were read by the research team and an initial deductive coding structure was developed, focusing on the questions relating to employee rights and conduct limitations. This coding structure was used to analyze each policy, with the research team comparing initial coding of the policies and revising the coding structure based on the common understanding of the main research question and how this was reflected in the data. Both pattern-matching (Yin, 1994) and memoing (Miles and Huberman, 1994) were used as part of the data analysis. This study’s research design enabled the research team to collect rich qualitative data on the content of social media policies in state government.

Findings and Discussion

An examination of policies indicated considerable variation in terms of what topics were included, the depth of coverage, and the clarity of consequences. Table Two presents a listing of the occurrence of key topics related to employee rights and conduct within the policies. Analysis of the policies focused on two main areas of employee rights, employee conduct and constitutional rights. These topics will be addressed in turn.

Table 2: Element Included in Policies

	No	Yes
Agency Policy	43.5%	56.5%
1st Amendment	17.4%	82.6%

Professional		
Professional Authority	13.0%	87.0%
Professional Disclaimer	17.4%	82.6%
Professional 4th Amendment	52.2%	47.8%
Professional Information Accuracy	47.8%	52.2%
Professional Discipline	56.5%	43.5%
Professional Acceptable Use	78.3%	21.7%
Professional Political Activity	69.6%	30.4%
Professional Gain	65.2%	34.8%
Professional Expectation of Conduct	21.7%	78.3%
Professional Confidential	8.7%	91.3%
Professional Security	39.1%	60.9%
Professional Harassment	39.1%	60.9%
Personal		
Personal Focus	30.4%	69.6%
De Minimus Use	60.9%	39.1%
Restricted Action	56.5%	43.5%
Personal 4th Amendment	69.6%	30.4%
Personal conduct/ethics	56.5%	43.5%
Personal Disclaimer	47.8%	52.2%
Personal Appropriate Behavior	69.6%	30.4%
Personal Security	56.5%	43.5%
Restriction on Private Resources	65.2%	34.8%
Personal De Minimus at work	56.5%	43.3%
Personal use outside of work	52.2%	47.8%

* Often associated IT policies would address this topic; this measure only indicates if it was directly addressed within the social media policy.

Professional and Personal Conduct

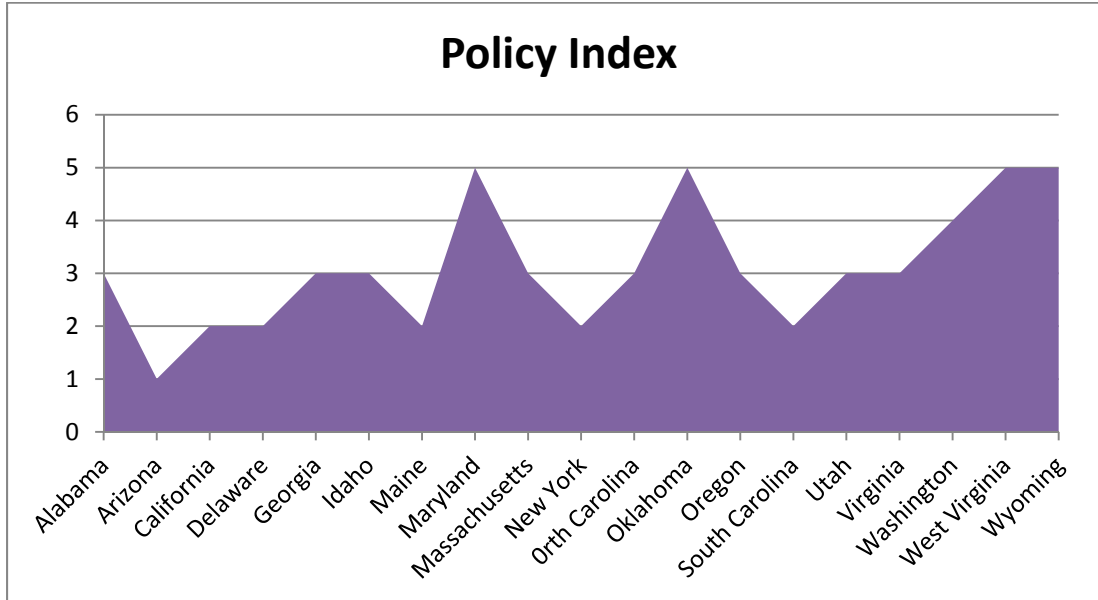
Conduct policies relate to a range of employee on-duty as well as off-duty conduct. The focus of these policies relate to conduct appropriate on-duty as part of an employees' official duty, non-work related activities conducted while on-duty, and non-work related activities conducted while off-duty. The range of areas covered demonstrates a variety of treatment of employee actions and raise implications for employee on-duty and off-duty behavior. There is a divide between policies that are specific in terms of indicating how an individual should act and

what is permitted or not and those that describe a set of expected values that the employee should hold.

The most common professional conduct issue included in social media policies is related to the need to protect confidential information of the government, with 91.3 percent of the policies referencing this practice. For example, Alabama’s policy states, “Users shall not post or release proprietary, confidential, sensitive, personally identifiable information (PII), or other state government Intellectual Property on social media sites.” A large majority (87%) of the policies address the issue of authority, who can be on and what they can do on a social network as a representative of the state. Tightly coupled to authority requirements is the requirements to provide a disclaimer identifying oneself and whether the speech is a function of their position in the government or as a private citizen (82.6%). Seventy-eight percent of the policies address issues of conduct becoming a public official (78%).

Examining an index of five key policy areas combined (limitations on political activity, prohibition against using state resources for personal gain, the expectation of conduct becoming of a public official, prohibitions on harassing actions, and specification of the requirement to only disclose accurate information), only 17.4 percent of the policies include all five elements, with the same percentage addressing none of these in their policy. Twenty-six percent (26%) cover one or two of these topics and the largest majority (34.8%) include three of these issues, while the remaining 4.3% had four. Chart One below visually represents each state’s policy index.

Figure Two: Policy Index by State



In some areas, there is significant consistent coverage and language used. For example, the language across policies related to limitations of use related to political activities or for personal gain is very consistent. Maryland’s policy specifically informs employees that “Endorsement of political parties, candidates, or groups” is strictly prohibited. Other topics, such as conduct appropriate for a public official, involve a great diversity in the type and depth of coverage and the associated details.

When considering how policies address the issue of employee conduct, there are vastly different approaches taken from highly restrictive of specific actions (most often work conduct at work) to aspirational expectations of conduct that is becoming a public employee. While expecting public employees to strive for a higher standard of conduct is a good thing, it does not provide employees specific information about what behaviors will be accepted and which ones might result in disciplinary action.

Lewis and Gilman (2005) discuss models that public managers take with the goal of encouraging ethical practice and ethical practitioners. Lewis and Gilman note that managers can

choose the “low road” approach, which is focused on employee compliance to laws and policies, the “high road” approach, which relies on the employee’s ethical integrity and decision-making, or the “fusion road” which combines the two. In examining state social media policies all three models can be seen in social media policy design. An example of a “high road” model is Arizona’s policy that requires employees “Be respectful and mindful of the state, in addition to state leadership, state employees, customers, partners, vendor, citizens, and the public when participating in social networks and web blogs.”

Many states take a “hybrid” approach restrict their employees’ behaviors and require compliance with other state policies while also noting an expectation of professionalism or ethical behavior in general. For example, Georgia notes that there is an:

Expectation of appropriate and ethical conduct of a State representative including cautions against posing offensive, profane, scandalous, libelous, defamatory, pornographic, or otherwise offensive language or materials.... All agency-related communication through social media outlets should remain professional in nature and should always be conducted in accordance with the agency’s communications policy, practices and expectations.

As with the Georgia policy many policies specifically speak to issues of language and draw attention to the expectation of conduct in general as well as name specific limitations and policies to consider and apply in the use of social media sites.

Policies most commonly address issues related to conduct at work. Limitations to on-duty behavior are common and are in place to ensure a safe and appropriate work environment. When policies begin to impact off-duty conduct employees may raise concerns about the impact of employers into their rights as private citizens. While the coverage of off-duty conduct is less directly addressed within state social media policies many employment actions (especially those that result in high media attention) relate to off-duty personal behavior undertaken on personal devices. If employees are going to be faced with potential disciplinary actions for off-duty

actions, yet policies have not been clear about their stance on these issues in advance employees may feel misled and have concerns that their rights are being violated.

The most common manner that off-duty conduct not on state equipment is treated is through a reference to the blurring of the lines for a public employee between on-duty and off-duty and the need to maintain a level of conduct appropriate for public officials. As Idaho's policy notes:

Perception is reality. In online social networks, the lines between public and private, personal and professional are blurred. Just by identifying yourself as a state employee, you are creating perceptions about your expertise and about the agency. Be sure that all content associated with you is consistent with your work and with the State's values and professional standards.

Oklahoma goes further in their treatment of personal actions trying to encourage their employees to try to make a clear distinction in what Idaho identifies as a blurry area. Oklahoma's policy notes:

All State agency employees may have personal social networking, Web 2.0 and social media site. These sites should remain personal in nature and be used to share personal opinions or non-work related information. Following this principle helps ensure a distinction between sharing personal and agency views.

The most common (52.2%) off-duty requirement is including a disclaimer. Similarly, many states request that employees make a disclaimer on any personal social media site. For example, Utah's policy requires employees that publish to websites outside the state to use a disclaimer such as "The postings on this site are my own and do not necessarily represent the State of Utah's positions, strategies, or opinions."

When considering employee rights and behaviors, there is a dichotomy in interpreting the impact on employee rights through the creation of policies. While policies can act to limit or restrict the rights of employees in terms of what actions, behaviors and conduct they may undertake, these policies can also act to protect employees from intrusion by others onto their

rights. For example, Oregon’s policy notes “Derogatory, offensive, discriminatory, threatening or otherwise unprofessional behavior toward other employees via social media may violate state human resources policies.” While these policies are placing restrictions on individuals, they are aimed at creating a work environment in which employees have an expectation that their “right” to a safe and non-harassing work environment is protected.

First and Fourth Amendment

As citizens there is an expectation of the protection of First and Fourth Amendment rights both while at work and off-duty. These two topics are a central focus of this research as they are the most direct impact on the constitutional rights of public employees. The manner in which these issues are addressed in the various state social media policies is often indirect but the impact of the language within the policy results in an impact on the First and Fourth Amendment rights of the employees. Most commonly, the nature of the language in these policies creates a case for the employer to argue that they would have a justification for restricting such rights based on a balancing test. The use of specific language which would impact the balancing tests may be intentional or accidental, particularly given the ownership of most of the policies within the IT agencies of the states.

First Amendment Findings

With respect to First Amendment issues, none of the policies specifically lay out the requirements of protected employee speech (matter of public concern, job duty test, and balancing of government versus employee interests), but over eighty-two (82.6) percent of the policies deal with First Amendment restrictions in some format. While most policies do not directly address First Amendment concerns, many address employee conduct, often highlighting

the blurry line between official and unofficial actions. These statements may influence when and how employees believe they have the right to speak on matters of public concern.

The most common types of First Amendment restrictions are related to authority and disclaimers, which are designed to indicate who can speak on behalf of an organization and also to indicate that personal speech is not reflective of organizational viewpoints. For example, California's social media policy related to authority states:

Users shall not speak in social media websites or other on-line forums on behalf of an agency, unless specifically authorized by the agency head or the agency's Public Information Office. Users may not speak on behalf of the State unless specifically authorized by the Governor.

In terms of disclaimers, Maryland articulates a clear policy:

Individual, originating from a State employee clearly representing themselves as a State employee publishing content to any social media site outside of a Maryland domain and not conducting state business, must use a disclaimer such as this: 'The postings on this site are my own and don't necessarily represent Maryland's positions, strategies, or opinions.

The disclaimers required by many policies also pose an alternative and interesting concern, in that the government may essentially be establishing the right of the employee to speak at any time as a private citizen, thereby reducing First Amendment restrictions traditionally related to job duty.

In many policies, there are also cautions about blurring personal and professional roles, which are designed to put the employee on notice that their behavior may be restricted, regardless of location, and that such behavior is subject to disciplinary action. However, some policies explicitly prohibit freedom of speech/actions (regardless of legality to do so). A final example of First Amendment restrictions is outlined in Arizona's policy, which states:

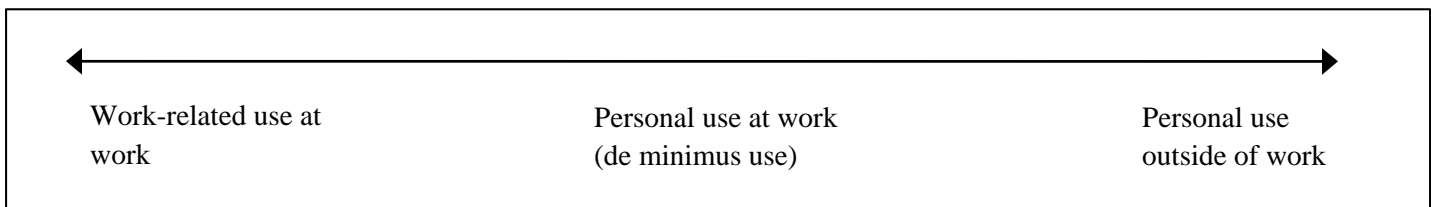
State personnel/contractors shall not post information, photos, links/URLs or other items online that would reflect negatively on any individual(s), its citizens, or the state, unless approved by agency policy.

First Amendment rights are an interesting area within public sector employment, as these rights have moved from essentially no right of free speech in the pre-1950s to a slightly more expansive legal assessment of employee rights, as found in both the *Pickering* and *Garcetti* cases. The courts do not consider organizational policies when assessing First Amendment rights, so the primary goal of many policies is to influence employee behavior, understanding, and beliefs (i.e. portray the organization in a favorable light through direct speech about the government or through employee conduct restrictions).

Fourth Amendment Findings

The states' social media policies are quite broad and varied in their treatment of Fourth Amendment (privacy) rights. Essentially, Fourth Amendment restrictions or protections deal with the ability of the government to monitor employee use of either government-owned resources for work or personal purposes, or less frequently, to monitor employee use of personal resources for personal purposes when there might be an impact on the government's reputation. As previously noted, 47.8 percent of the policies directly address privacy restrictions related to work-related conduct while utilizing government-owned resources, while 30.4 percent indicate privacy restrictions in personal uses of social media, either while at work or outside of work. In order to demonstrate the major categorizations of Fourth Amendment restrictions within policies, Figure Three is offered.

Figure Three: Fourth Amendment Continuum



The first category on the continuum, work-related use at work, is most often addressed in the social media policies, with 13 of the 23 state policies mentioning limitations on Fourth Amendment rights. The remaining ten state policies do not explicitly address Fourth Amendment rights but it is plausible that other organizational policies, such as broad IT policies, may indicate no expectations of privacy when using government-owned computers, networks, or cellular phones. This hypothesis was not tested during the course of this research, as only explicit social media policies were examined. Of the thirteen (13) policies addressing Fourth Amendment restrictions on work-related social media use while at work, five (5) policies specifically indicate that monitoring may occur on government-owned equipment, thereby indirectly informing employees of restrictions on their right to privacy. Four (4) policies clearly indicate no assumption of privacy, and the remaining four (4) note both monitoring and that employee have no expectation of privacy. Example policy language addressing both areas is found in Virginia's policy, which states:

A. Monitor Usage: No user shall have an expectation of privacy in any message, file, image or data created, sent, retrieved, or posted in the use of the Commonwealth's equipment and/or access. Agencies have a right to monitor any and all aspects of electronic communications and social media usage. Such monitoring may occur at any time, without notice, and without the user's permission.

The second category in the continuum, personal use of social media while at work, is less frequently mentioned in policies, but nine (9) states' social media policies do address the issue. Four (4) specifically refer only to monitoring, as is noted above in the Virginia policy; while two (2) remind the employee that there is no assumption of privacy. Finally, three (3) directly state that monitoring may occur and indicate no expectation of privacy. An example of this type of policy is found in West Virginia, which indicates,

The State reserves the right to filter Internet and social media site availability, and to monitor and review employee use. Employees have no expectation of privacy while using State-provided information resources.

The least common type of Fourth Amendment restriction is the final category of the continuum, personal social media use outside of work. Only three policies categorically address personal use of such sites, with one (1) referring to monitoring and two (2) referring to no assumption of privacy. All three policies are broad and vague in their treatment of this type of restriction. The state of Washington's policy is offered as an example:

Privacy-Employees should have no expectation of privacy in information stored on state computers or devices. Furthermore, there should be no expectation of privacy when employee conduct concerns the agency or its clients.

The use of a continuum related to Fourth Amendment rights and public sector employees facilitates the discussion of the broad range of restrictions under which employees operate. The main purpose of these policies, whether intentionally or consequential, is to restrict expectations of privacy in a clear and consistent manner, which the courts may weigh in favor of the government in the event of legal action.

Conclusions and Future Research

Beyond broadening the knowledge base surrounding governmental social media policy, this paper specifically addresses issues related to employee rights, an often-overlooked but critically important component of social media policy formulation and application. Employee rights are primarily covered in two areas of focus, employee conduct and constitutional rights. Employee conduct has a range of treatments, from similar language and continuity of basic conduct elements such as appropriate language and personal gain, to variation in how states treat other aspects, such as ethical responsibility and harassment. Largely, there is a lack of clear direction outside of some common prohibitions (such as information accuracy). For an

employee, most policies are confusing or lack clear steps in how they should use social media sites both on and off duty though it is clear disclaimers are a commonly requirement element for both settings. Interestingly, results of this study indicate that few states cover a broad range of conduct elements within their policies, which raises concerns and need for future research as more disciplinary action and legal cases result from social media activities.

Constitutional rights, particularly First and Fourth Amendment issues, are also treated with varying specificity in the state policies. When covered at all, First Amendment rights are addressed in an indirect manner and lack a clear indication of what, if anything, constitutes protected speech. Many of the policies make references to the blurring of professional and personal roles but the discussion lacks little direction in terms of what that means for actions outside of warning the employees to be aware of this issue. Employers are struggling with if and how they should limit the actions of their employees in social media arenas, including prohibited disclosure of place of employment on personal sites, requiring disclaimers, and limiting social media use holistically. At the same time, many employees are concerned that these actions may be impacting their right to freedom of speech. While employers can legally make such requirements, it may be bad managerial practice and difficult to enforce in a consistent manner. Employers need to consider how such policies reflect on their strategic direction and value sets and relate to their communication policies and practices.

In contrast to First Amendment issues, policies more explicitly address privacy issues along a continuum from work-related use at work to personal use outside of work with clear processes and requirements. Not all policies tackle the question of monitoring or policies since IT policies usually cover the issue of monitoring and establishing the limitation on employees' expectations of privacy. While other policies may adequately address this issue, it is interesting

to note how few restate or reinforce these practices in the social media specific policies (13 of 23). It may be critical for employers to definitively establish that employees do not have an expectation of privacy, particularly in the event of litigation. Policy writers will need to think carefully about where they want to orient their policies along the continuum, as well as follow court decisions related to this ever-changing field. Furthermore, in order to recruit and retain high-quality employees, employers will want to consider how their practices will be perceived by recruits and current employees alike.

Upon reflection of these results, there is a need for future research to understand the purposefulness and strategy employed in the creation of these policies. Probing questions, such as “Is the often vague treatment of First Amendment due to a conscious choice and a legally reviewed document or the product of an accidental connection being made in a quick policy writing process?” should be investigated. Evidenced by the amount of replicated language between the policies, questions of the degree of tailoring and thoughtful application of one organization’s policy to a different setting are raised. Additionally, while this research examines how current social media policies may be impacting current employee rights, there are a range of additional HR related questions pertaining to hiring, disciplinary actions, and evaluation, which should be considered within the new context of social media. As was recently noted by Tina Hsu, an employment attorney quoted in a media article about “Facebook Firings”: "You can't stick your head in the sand and tell your workers to abstain. You have to teach them how to navigate this new area" (Jamieson, 2011).

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Appendix:

Table A1: States with Social Media Policies:

Alabama
Arizona
California
Connecticut
Delaware
Georgia
Idaho
Iowa
Maine
Maryland
Massachusetts
New York
North Carolina
Oklahoma
Oregon
South Carolina
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wyoming