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The Legal Side of Employees' Use of Social Media
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- I. Introduction.** Each social networking site is tailored to a specific need. They enable shared community experiences, both online and in person, and allow communication by the public sector.
- II. Government Use of Social Media.** Social media should be used as supplements to disseminate information and engage residents. Additionally, it is another form of communication and most state laws require retention of records and release under FOIA. Posts may also trigger compliance with open meetings laws.
- III. Employee Use of Social Media.** Employees have no expectation of privacy at work. However, the First Amendment gives employees the right to engage in protected speech without interference. To determine whether speech is protected, consider whether:
 - A. employee is speaking as citizen for a public concern, such as safety and policy protection, governmental wrongdoing and misconduct, or exposure of wrongdoing by government officials; and
 - B. there is justification for treating the speech differently. The employer can make an employment decision so long as it is not illegal, such as based on race, gender, and/or religion.Employees can be disciplined for: 1) excessive use of social media; 2) individual gripes; or 3) illegal or improper personal social media activities. On the other hand, employers do need to be careful not to discipline employees for: 1) protected concerted activities; 2) matters of public concern; or 3) political or other protected speech.
- IV. Social Media Policies.** Policies give notice of forbidden content, paying special attention not to violate any laws or individual rights. Employees should be trained on the appropriate use of social networking.
- V. Drafting a Social Media Policy.** The policy should include:
 - A. purpose;
 - B. approval and administration;
 - C. comment policy;
 - D. compliance with laws; and
 - E. employee usage policy.

Ancel Glink is a full service government law firm that has consulted with and represented Illinois local government at all levels for more than 85 years. Ancel Glink attorneys have the experience and expertise in a variety of practice areas relating to local governments, serving as both general counsel as well as special counsel for numerous park districts across the state. Ancel Glink is ready to meet virtually any legal services a local government may need.