

India Inc tightens screws on quitters venting online

LUBNA KABLY, TNN | Mar 13, 2014, 02:21AM IST

Cussing the company that you just quit online? If you're that type, you might have a lawsuit on your hands.

Given how easy it is today for disgruntled or ex-employees to vent in cyberspace, a number of Indian companies are introducing social media policies and non-disparagement clauses.



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Globally, companies adopt social media policies that dictate what any employee can say, or more importantly, not say online. Use is also made of non-disparagement clauses, especially in top-level exits. Steven Sinofsky, a key executive who resigned from Microsoft, and Conan O'Brien, who had an alleged fallout with NBC, have both signed severance agreements containing such clauses. Albeit this is linked to severance payout, and O'Brien was reportedly paid a cool \$32.5 million.

With 10 crore Facebook users and more than three crore active Twitter accounts in the country, India Inc is now following suit. As Shivaram T, HR leader at SAP Labs, India, points out, "In today's networked environment, negative remarks spread quickly and have a multiplier effect. Thus companies are moving towards having legally watertight clauses in employee agreements, which protect the company, its brand, customers and other stakeholders."

Most likely to bad-mouth a firm are former employees so companies are making severance agreements of key employees tighter. "We have increasingly seen use of non-disparagement clause linked to exit packages in severance agreements with senior employees. We are also seeing a trend of including non-disparagement clauses in new executive employment agreements. Automatically, employees would be under an obligation to comply with the clause on exit," says Anand Mehta, partner, Khaitan & Co, a law firm. A few years ago, during a top-level shake up at Diageo India, newspaper reports indicate that non-disparagement clauses were adopted.

"In most cases, when top-level employees exit, they prefer to negotiate a mutual non-disparagement clause under which even the company is prohibited from disparaging and harming the interests of the outgoing employee," says Vikram Shroff, head, HR law at Nishith Desai Associates.

"We have also seen cases where the PR and legal teams of a company work with the exiting employee and draft joint release statements for both internal and external communications," adds Nohid Nooreydzan, partner at law firm AZB & Partners.

In the US, there are stray instances of employees challenging use of non-disparagement clauses. The Indian Constitution also guarantees freedom of speech. "However, it also allows reasonable restrictions to be placed on exercise of the right to free speech if it could lead to defamation," explains Shroff. So far, non-disparagement clauses haven't been challenged in court and appear to be here to stay.

Some companies are detailing their social media policies in their offer letter itself. "Our social media policy is part of our offer letter. RPG's code of ethics, which is signed by all employees on joining, provides that no employee should post any defamatory comments about the company, its employees, clients and associates. Sharing of proprietary information of the company or its clients is also prohibited. Under this code, even ex-employees cannot engage in activities that could affect the company's interest," says Arvind Agrawal, president HR, RPG Enterprises.

"Often employees make comments in jest or in a fit of frustration. These policies help educate them on appropriate usage of social media platforms," says Mohandas Pai, chairman, Manipal Global Education.

"In addition, access to social media sites within office premises can be curtailed or monitored via an IT security system," adds Amit Das, chief HR officer at Reliance Communications. At Reliance Communications, access within the office is available only to select social media sites that meet the specified business requirements. To prevent undesired behavior after office hours, the company also has an exhaustive social media policy in place. For example, employees are required to abide by national and international copyright laws or those governing libel or defamation. They cannot make personal comments about other employees or the company on networking sites. Social media policies adopted by companies even prescribe for disciplinary action in case of errant behaviour, such as at SAP Labs. HR personnel also caution against the use of anonymous accounts, as the culprits can always be traced.