

**Breakout Session**

**Social Media Considerations:  
Practices to Mitigate Risk**

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August 28, 2020

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- An attorney for 25 years, Phillip also appears regularly as a TV and radio news commentator, lectures in government, politics and international relations as an adjunct university professor, and served in the executive and legislative branches of Puerto Rico's government, as Advisor to the Governor for Federal Affairs, Assistant to the President of the Government Development Bank, Assistant to the President of the PR Public Broadcasting Corporation and as General Counsel for the University of Puerto Rico (Rio Piedras).

# LEARNING OBJECTIVES

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- Identify problematic social media situations that could pose challenges for your organization
- Learn what should be in a social media policy
- Demonstrate knowledge of “overly broad” language in existing social media policies that has been found to be problematic
- Discuss strategic considerations for social media use
- Review the contents of a basic social media policy and procedure

# AGENDA

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1. Introduction: Social Media in the New “Normal”
2. Why a Written Policy?
3. Crafting a Social Media Policy
  - a. Lawful Restrictions
  - b. Unlawful Restrictions
  - c. Basic Contents of the Policy
4. Social Media and Human Resources Decisions
  - a. Pre-Hire Employment Decisions
  - b. Regulating Employees’ Social Media Activity
  - c. Social Media Activity by Former Employees
5. Using Social Media to Communicate with the Public during the COVID-19 Public Health Emergency
6. Questions

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# Introduction

## A New Landscape for Social Media





# DEFINING “SOCIAL MEDIA”

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***Social media*** includes all means of communicating or posting information or content of any sort on the Internet, including to your own or someone else’s web log or blog, journal or diary, personal web site, social networking or affinity web site, an application or page (Facebook, twitter, tiktok, whatsapp, Instagram, snapchat, etc.), web bulletin board or a chat room, whether or not associated or affiliated with [employer], as well as any other form of electronic communication.

- Forms of social media include, but are not limited to, written text, audio recording, photography, and video recording.
- Social media helps extend your organizational brand online and further into the public sphere.

# CONTEXT: THREE COVID-19 EMERGENCY DECLARATIONS

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1. HHS Secretary declared a **Public Health Emergency** for the coronavirus pandemic, pursuant to Section 319 of the Public Health Service Act. The PHE is retroactive to January 27, 2020.
2. The President declared an emergency in response to the coronavirus pandemic, on March 13, 2020, under the **National Emergencies Act**.
3. The President also declared a *national emergency* under the **Robert T. Stafford Disaster Relief and Emergency Assistance Act**. Individual **Major Disaster Declarations** for each State, DC and Territories.

These three emergency declarations remain in effect and give rise to temporary guidance, budget and program flexibilities, new opportunities and challenges to communicate with program participants, the public, staff and program offices.

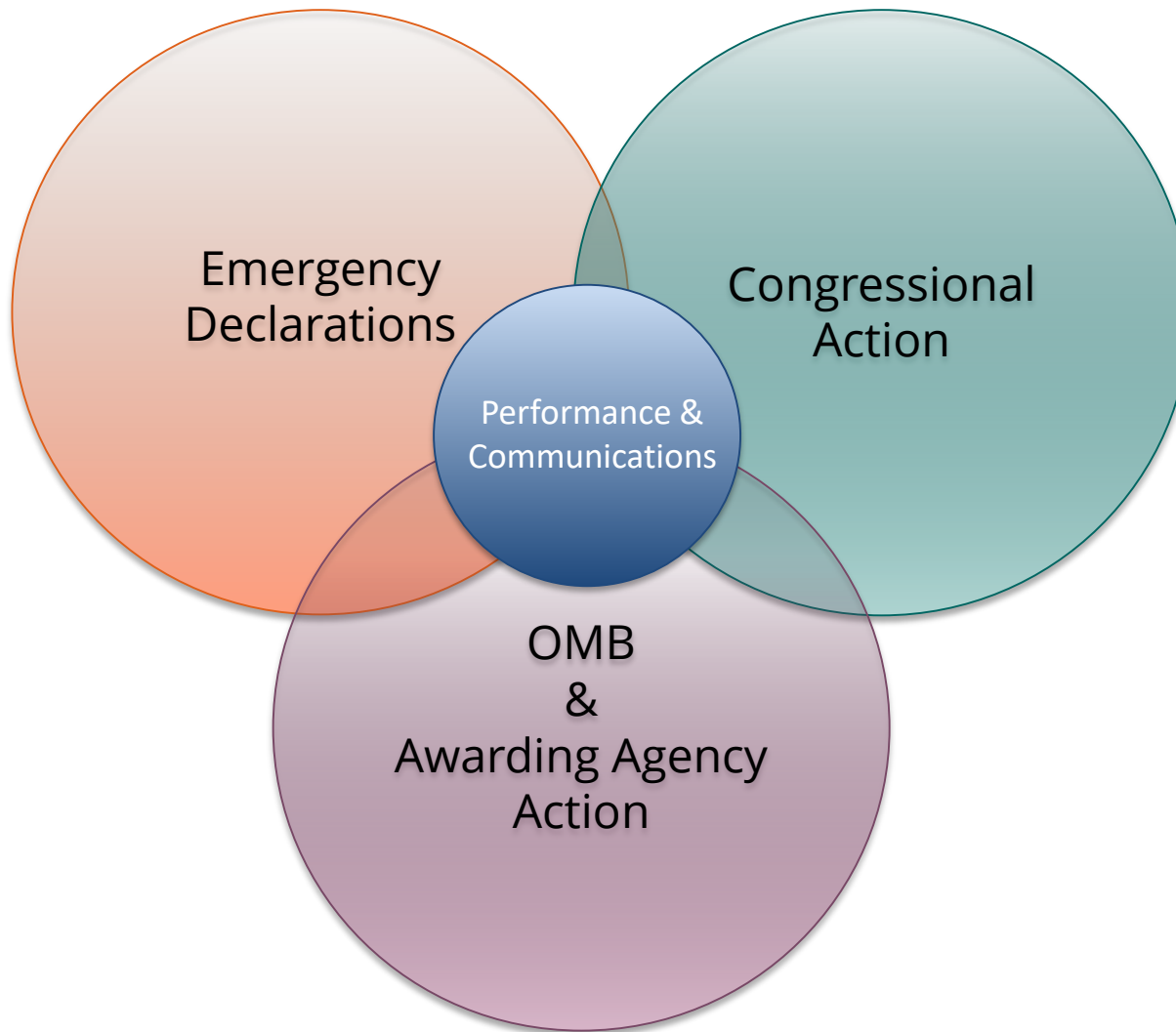
# FIVE NEW LAWS IN RESPONSE TO COVID-19

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1. **Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020**, Pub. L. 116-123 (Mar. 6, 2020), Div. A, Tit. III, 134 STAT. 149
2. **Families First Coronavirus Response Act** (“FFCRA”), P.L. 116-127 (Mar. 18, 2020)
3. **Coronavirus Aid Relief and Economic Security Act** (“CARES Act”), Pub. L. 116-136, § 3831 (Mar. 27, 2020)
4. **Paycheck Protection Program and Healthcare Enhancement Act**, Pub. L. 116-139, H.R. 266, Div. B, Tit. I (Apr. 24, 2020)
5. **Paycheck Protection Program Flexibility Act**, Pub. L. 116-142 (June 5, 2020)

These statutes included substantial appropriations, program modifications and flexibilities which, along with the emergency declarations, guidance and agency regulations are key for messaging and performance. (Maybe more laws in the pipeline?)

# IN SUM: FOUR MAIN COMPONENTS



# SOCIAL MEDIA SUPPORTS PROGRAM ACTIVITIES IN THIS NEW “NORMAL”

1. Service center closure
2. Social distancing
3. Teleworking
4. Reaching Out
5. Providing remote services
6. Participant support
7. Staff support
8. Staff supervision
9. Staff training
10. Reopening centers

Monitoring



Messaging



# QUESTION #1

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How often do you look at your organization's social media?

- a) Every day
- b) Once a week
- c) Not that often
- d) Never
- e) I do not know if our organization has social media

# LEVERAGE YOUR ORGANIZATION'S SOCIAL MEDIA STRATEGICALLY

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1. Highlight new developments
2. Support your operations and program compliance
3. Target your audience(s)
4. Plan, design your messaging and be consistent
5. Choose the platform(s) that make sense to your program
6. Gauge feedback
7. Respond to and interact with your audience(s)
8. Update 24/7/365: Watch out for erroneous/stale information
9. Adjust your strategy according to program needs and feedback
10. Document
11. Monitor program resources and guidance
12. Enhance your program credibility

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# Why?

## The Importance of Written Policies and Procedures



## QUESTION #2

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How familiar are you with strategies for writing and updating policies and procedures?

- a) Very
- b) Somewhat
- c) Unsure
- d) Very unsure

# WRITTEN POLICIES MITIGATE RISK

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Written policies can prevent chaos, confusion, and legal problems.

1. They set expectations
2. Keep management and staff accountable
3. Ensure compliance with the law
4. Can help in defense against legal claims
5. Let employees know where to turn for help

# GOOD POLICIES

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- Policies are written in clear, concise, simple language.
- Policy statements address what is the rule rather than how to implement the rule.
- Policy statements are readily available, and their authority is clear.
- Designated POC identified in each document are readily available to interpret policies and resolve problems.
- A consistent, logical framework for action.

# PROCEDURES ARE ESSENTIAL

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- Policies and procedures are an essential part of any organization.
- Together, policies and procedures provide a roadmap for day-to-day operations.
- They ensure compliance with laws and regulations, give guidance for decision-making, and streamline internal processes.

# POLICIES VS. PROCEDURES

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- Policies set some parameters for decision-making but leave room for flexibility. They show the “why” behind an action.
- Procedures, on the other hand, explain the “how.” They provide step-by-step instructions for specific routine tasks. They may even include a checklist or process steps to follow.

# HOW TO WRITE A STANDARD OPERATING PROCEDURE

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- Processes and procedures each include step-by-step instructions to help you to correctly perform a specific task.
- A process usually works at a higher level while a standard operating procedure takes the elements of a high-level process and adds more detail, specific assignments, and workflows to conform with company or industry standards.
- You may only need a process when you only need your audience to know what needs to be done to achieve the desired outcome.

# COMMON QUESTION: DO WE NEED A POLICY/PROCEDURE FOR THAT?

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## QUESTION:

Do we have to have a policy and procedure  
for every single thing?



## COMMON QUESTION: DO WE NEED A POLICY/PROCEDURE FOR THAT?

It does not do to leave a live dragon out of your calculations if you live near one. J.R.R. Tolkien.

**ANSWER: No, but policies and procedures tell employees what they need to know and what to do in the process. They demonstrate that you tried to tell employees what to do in order to comply.**



# DISTRIBUTION

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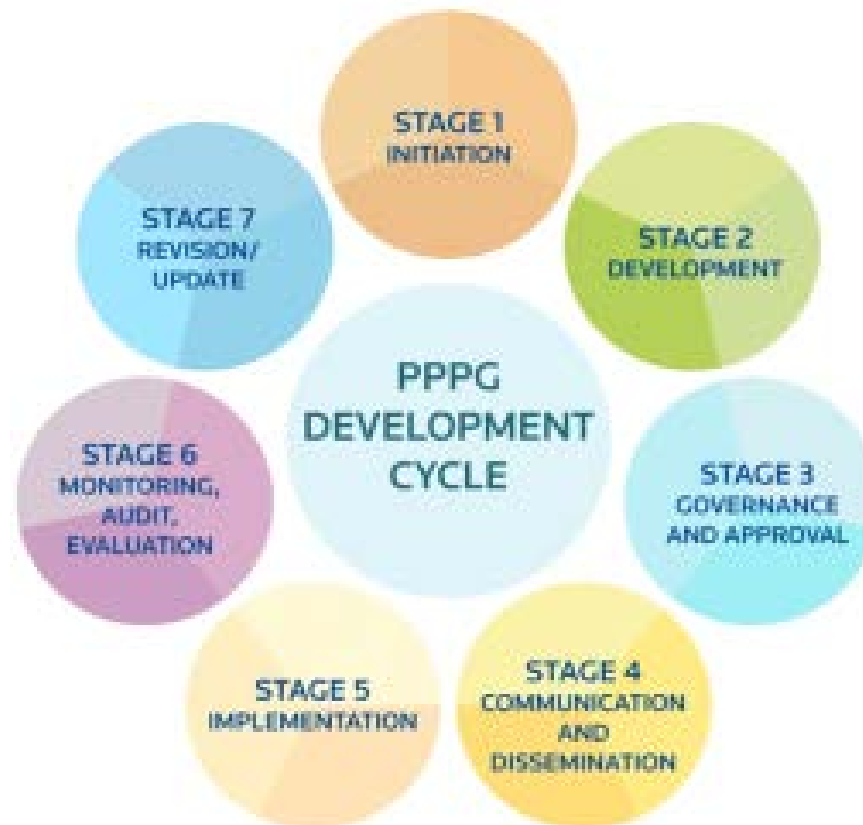
- Ensure that each employee has an up-to-date copy of each policy and procedure that is relevant to their job, or that the policies and procedures are kept in a central place where all employees can easily access them.
- Make sure employees receive any significant updates to policies and consider ensuring that employees sign off that they have read, understood, and agree to abide by the updated policy.

# HOW OFTEN SHOULD WRITTEN POLICIES AND PROCEDURES BE UPDATED?

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- As a general rule, every policy should be reviewed no later than every three years.
- Some recommend reviewing policies annually.
- Policy review doesn't have to be as daunting a task as it sounds.

# POLICIES/PROCEDURES/PROTOCOLS/GUIDELINES



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# Key Considerations for Crafting a Social Media Policy

## QUESTION #3

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Let's find out about your organization's social media policy:

- a) We have a social media policy, and I'm familiar with it
- b) I know we have one, but I'm not sure what it says
- c) I do not know if we have a social media policy
- d) We do not have a social media policy

# BE SPECIFIC: NATIONAL LABOR RELATIONS BOARD DECISIONS

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- National Labor Relations Board (NLRB) decisions have a common theme: **specificity**.
- The more specific and narrow the social media policy, the more likely it is to survive NLRB scrutiny.
- Tip: Aim for narrowly tailored and specific policies.
  - **What do we mean?**

# LAWFUL TO RESTRICT CONFIDENTIAL COMPANY INFORMATION

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Social media provisions deemed lawful by the NLRB (meaning that the employer can enforce them) include, but are not limited to:

- “The employer could request employees to **confine their social networking to matters unrelated to the company** if necessary to ensure compliance with securities regulations and other laws.”
- “**Employees are prohibited from using or disclosing confidential and/or proprietary information**, including personal health information about customers or patients.”
- “Employees are prohibited from discussing in any form of social media **‘embargoed information’** such as launch and release dates and pending reorganizations.”

*NLRB Memorandum (January 24, 2012) at 17.*

<https://apps.nlr.gov/link/document.aspx/09031d45807d6567>

# LAWFUL TO RESTRICT UNAUTHORIZED STATEMENTS ON BEHALF OF THE EMPLOYER

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- “No unauthorized postings: Users **may not post anything on the internet in the name of the employer** or in a manner that could reasonably be attributed to the employer without prior written authorization from the President or the President’s designated agent.”
- “...unless you are specifically authorized to do so, **you may not represent any opinion or statement as the policy or view of the employer or of any individual in their capacity as an employee** or otherwise on behalf of the employer.”

*NLRB Memorandum (May 30, 2012) at 15-17.*

<https://apps.nlr.gov/link/document.aspx/09031d4580a375cd>



# WHAT NOT TO RESTRICT (1)

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- Social media policies/provisions that the NLRB deemed **unlawful** include, but are not limited to:
  - “Making disparaging comments about the company through any media, including online blogs, other electronic media or through the media.”

*NLRB Memorandum (January 24, 2012) at 4.*

## WHAT NOT TO RESTRICT (2)

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“Employees are prohibited from disclosing or communicating confidential, sensitive, or non-public information concerning the company on or through company property to **anyone** outside the company without prior approval of the senior management of the law department.”

*NLRB Memorandum (January 24, 2012) at 13.*

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# Tips For Crafting a Social Media Policy

# POLICY CRAFTING TIPS (1)

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- ✓ Tell applicants that the information on their profiles can and will be used as part of the screening process.
- ✓ Be sure to draft a policy that is narrowly tailored and specific.
- ✓ Ensure provisions of the policy are specific to the nature of the organization's business interests.
- ✓ Try to use simple language – reduce ambiguity and misrepresentations.

## POLICY CRAFTING TIPS (2)

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- ✓ Organize sections of the social media policy so that it is clear to a reasonable person what is prohibited and what is not.
- ✓ Employment Cycle: Include provisions that address pre-hire, during employment, and post-hire situations.
- ✓ Do not assume all social media use during work hours should be prohibited without analyzing your workplace need.

## POLICY CRAFTING TIPS (3)

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- ✓ Include allowed uses (if any) of social media.
- ✓ List/explain what types of information are deemed confidential and copyrighted material.
- ✓ If there is a confidentiality clause, make sure it is tailored to the nature of the organization's business and complies with associated privacy laws.
- ✓ To gain maximum benefit from a "savings" clause, strive to ensure each provision of the rest of the policy is lawful.

# POLICY CRAFTING TIPS (4)

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- ✓ Decide strategically where you want your policy to live: on its own, in your employee handbook, your IT manual, or in your standards of conduct.
- ✓ Keep the social media policy up to date: it should change over time as technology changes or to keep up with your needs.
- ✓ Train employees on the social media policy.
- ✓ Warn employees that there could be disciplinary actions for improper use of social media.
- ✓ Monitor social media use during work hours (with prior disclosure that you do this).
- ✓ Remain transparent about social media policy and monitoring procedures.

# POLICY CRAFTING TIPS (5)

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- ✓ Clearly express:
  - Who is authorized to speak on the organization's behalf.
  - When such representatives may speak on that organization's behalf.
  - What media may be used.
- ✓ Remain consistent in enforcing the social media policy.
- ✓ Make sure to account for state and local law.
- ✓ Consult legal counsel for policy design and implementation as needed.



# OVERVIEW: SOCIAL MEDIA POLICY CONTENTS

1. Statement of Authority, Policy and Purpose
2. Definitions (Social Media, Personally Identifiable Information, Protected Health Information, lockdowns, teleworking, reopening, etc.)
3. Applicability and Scope:
  - a. Training, Recertification, Records
  - b. Standards of conduct (Board, Council, Management, Staff)
  - c. Use of Social Media in pre-hiring decisions
  - d. Guidelines for Social Media use during employment (employer monitoring, use of work equipment, use of personal equipment, posting content, authority to act as spokesperson, networking, contacts with independent media, selection of media platforms)
    - 1) Official Use: Who's authorized, what for, when, how?
    - 2) Non-official / Personal Use
    - 3) Rules on Implied Endorsements (Friend, Like, Follow, Tweet, Retweet, Post, Status)
  - e. Post-employment rules
  - f. Parents, volunteers, contractors and other program participants
  - g. Discipline (grievance process, adjudication, enforcement)
4. Relationship with other rules, policies and procedures (Code of Ethics, Record Retention, Discrimination & Harassment, Privacy Rules, Whistleblowers, Political Activity, Lobbying, Intellectual Property / Copyright).
5. Revisions, duration, savings clauses.
6. Attached Procedures (Account Activation / Deactivation).

See, e.g., Corporation for National and Community Service, Policy No. 105: Social Media Policy (Dec. 15, 2017), available at: <https://www.nationalservice.gov/sites/default/files/documents/SocialMedia-2017.pdf>; OPM Social Media Policy (July 2017), available at: <https://www.opm.gov/news/social-media-presence/social-media-policy.pdf>

# SOCIAL MEDIA & EMPLOYMENT



## QUESTION #4

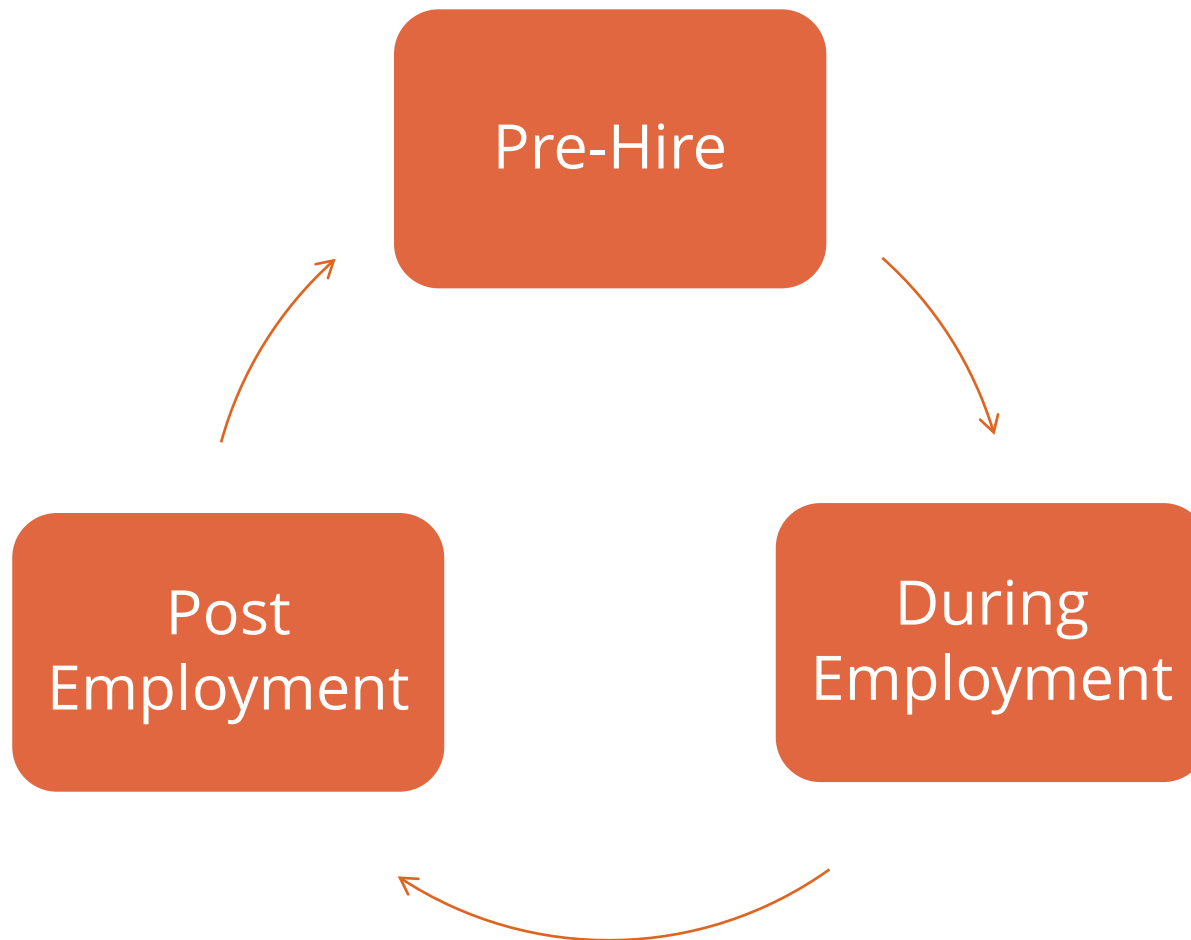
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Does your organization have a policy on use of Information Technology?

- a) Yes, and it includes rules on employee use of social media
- b) Yes, but it says nothing on employee use of social media
- c) Unsure
- d) No, we do not have and IT use policy

# SOCIAL MEDIA AND EMPLOYMENT LIFECYCLE

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# FIRST SOME RECURRING HR SOCIAL MEDIA ISSUES

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1. Can I identify as a [Name of Agency or NFE] employee?
2. I do not identify as a [NOA or NFE] employee on my personal media. Does A's [NFE's] social media policy still apply to me?
3. Do I need to place a disclaimer on my personal social media?
4. May I retweet, share on fb or promote official A's [NFE's] messages on my personal account?
5. May I retweet, share on Facebook or promote content created by external sources that discusses A's [NFE's] programs, or funding?
6. Can I display A's [NFE's] logos on my personal social media?
7. May I engage in political activity, seek donations, or encourage people to lobby for/against agency funding or legislation in my personal social media even if I identify as A's [NFE's] employee?

See Corporation for National and Community Service, Policy No. 105: Social Media Policy (Dec. 15, 2017) FAQs at 16-20, available at: <https://www.nationalservice.gov/sites/default/files/documents/SocialMedia-2017.pdf>.

# Pre-Hire Employment Decisions



# PRE-HIRING – ONE EXAMPLE

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Prior to hiring an applicant, an organization searches for that applicant's name on Facebook and finds the applicant's open profile page.

After reading through the profile's content, the employer eliminates the applicant from the position's potential pool.

# SOCIAL MEDIA ACCESS PRIOR TO HIRING

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Organizations employ several methods to access information about an applicant via his or her social media profile. For example:

- Independently viewing the applicant's profile if the potential employer can access it publicly.
- Hiring an outside organization/company to investigate the applicant's profile.



# SOME METHODS ARE RISKIER THAN OTHERS

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## **Unadvisable practices include:**

- Creating a profile request as a “friend” so that the organization can view the applicant’s information as a “friend” would.
- Asking the applicant for his/her own password to his/her social media account or profile so that the potential employer can log on and view the applicant’s information as s/he would see it.

# USE OF SOCIAL MEDIA INFORMATION PRIOR TO HIRE (1)

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What pre-hire social media information **can** an organization use to make an employment decision?

- Employers can judge candidates on the basis of all available information so long as that information is not prohibited or restricted by law.

# USE OF SOCIAL MEDIA INFORMATION PRIOR TO HIRE (2)

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- It is **okay** to make employment decisions based on:
  - A candidate's recklessness or (in certain circumstances) illegal activity
- It is **not okay** to make employment decisions based on:
  - A candidate's race, color, age, disability, religion, sex, or other protected classes.
    - See e.g., Title VII of the Civil Rights Act of 1964 (State's Civil Rights Act may provide greater protections than federal law)

# PRE-HIRE TIPS

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To ensure consistency, make sure that your **hiring policies and procedures** work in tandem with your **social media** policies.

If not consistent, update your hiring policies to make sure they take into account current best practices for use of social media.

Inform potential candidates that you will consider accessible social media profiles of the candidate in assessing qualifications for the job.

# Social Media During Employment



# EMPLOYER CONTROL OVER SOCIAL MEDIA ACTIVITY

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Once hired, how much say an employer has over its employees' social media activity is influenced by:

- Location & Time: Whether the employee is at work or not
- Equipment: Whether the employee is using work hardware/software or not

# SOCIAL MEDIA ACTIVITY CONTROL DURING WORK HOURS

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Organizations have a few basic options for control of employee social media activity:

- Ban everything
- Allow with restrictions
- Openly allow without restrictions

# OPTION 1: BAN EVERYTHING

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The easiest way to make sure that employees are not engaging in social media activity on work computers during work hours is by banning all social media sites from all computers.

- Can be done by adding social media websites to the listed prohibited websites on the computer's ban settings.
- But, may be problematic if your organization does any marketing of what you do or is working with community through social media.



## BAN EVERYTHING (2)

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To ensure that employees are not using work-provided equipment (e.g., smartphones, tablets, laptops, desktops) to engage in personal social media activity during work hours:

- Social media policy could set forth the ban as well as explain periodic and unannounced social media monitoring by the employer or IT consultants/staff at the direction of the HR director or IT director.

## BAN EVERYTHING (3)

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How can an organization ensure that employees are not using their own personal equipment, like smartphones, to engage in social media activity during work hours?

- **The organization can and should include in its social media policy a provision that addresses how personal equipment can be used during work time/on work hours.**

## BAN EVERYTHING (4)

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**Example:** “use of personal equipment should be kept to a minimum, used in emergencies, or in break time, and not interfere with work requirements.”

Clearly state the range of disciplinary actions that an employee may be subjected to if the employee engages in social media activity during work time using his/her personal equipment.

## OPTION 2: ALLOW WITH RESTRICTIONS

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- Might choose to allow social media for specific purposes or at certain times.
- Would need a clearly articulated policy allowing it on breaks or when authorized by the organization for work purposes.
- **For example:** “users may post on behalf of the organization on the organization’s social media profile if the employee has received prior written authorization by the Executive Director or their designee.”

# ALLOW WITH CONTENT RESTRICTIONS (1)

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- Can an organization limit the content of an employee's speech on a social media site?
  - Yes. An organization may limit an employee's speech on a social media site if the limitation is **for the protection of business interests and is not too broad or so restrictive** that it can reasonably be viewed as prohibiting an employee's right to discuss his/her wages or work conditions.
  - But, be careful! (Remember the NLRB decisions)

# ALLOW WITH CONTENT RESTRICTIONS (2)

Examples:

- If an employee makes a public statement on a social media site about **the organization's confidential information**, then that statement may justifiably be restricted.
- If an employee makes a statement about the **organization's poor work conditions** and that **elicits a response from other employees**, then the organization should not restrict that speech because it could be considered **"concerted activity"** about **"protected communication"** (e.g., work wages and work conditions).

## OPTION 3: OPENLY ALLOW WITHOUT RESTRICTIONS

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- Monitoring employees' social media activity is difficult if an employer does not have a social media policy in place.
- Employers may rely on the **monitoring policy** included in their Use of Information Technology policies to address overall work-time work equipment use.

# CANNOT DISCIPLINE FOR COMPLAINTS ABOUT WORK CONDITIONS (1)

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Under **Section 7** of the **National Labor Relations Act**, employees have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other “concerted activities” for the purpose of collective bargaining or other mutual aid or protection.



# CANNOT DISCIPLINE FOR COMPLAINTS ABOUT WORK CONDITIONS (2)

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- **Section 8** of the NLRA includes a list of various employer actions that are considered unfair labor practices...
  - **Employers are prohibited from disciplining employees for discussing work conditions** regardless of whether employees are or are not part of the union.

# BUT, SOMETIMES CAN MAKE ADVERSE EMPLOYMENT DECISIONS

- Organizations **may** make adverse employment decisions based on employees' social media work-related comments.
- Legal analysis of harm to employer would include several **factors**, including:
  - Harm to the employer's reputation or product;
  - Source and degree of any publicity (proof of adverse publicity);
    - Type and seriousness of misconduct;
    - The nature of the employee's position with the employer; and
    - The nature of the employer's business.
  - **Rendering the employee unable to perform his/her duties or appear at work;**
  - Leading to refusal, reluctance, or inability of other employees to work with the employee.

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# Post-Employment and Social Media Activity

# EMPLOYER CONTROL OVER A FORMER EMPLOYEE'S SOCIAL MEDIA ACTIVITY

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- How can an organization control a former employee's social media activity?
  - An organization should incorporate a post-employment element into its social media policy **extending its provisions so that they survive employment termination.**
  - Also, include in employment contracts (and severance agreements) **provisions regarding survival of confidentiality aspects.**

# Communications with Program Participants and the Public

## Different Agencies & Different Approaches



## QUESTION #5

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Does your organization use social media to reach out to the public?

- a) Yes, and we trained our staff on reaching out through social media
- b) Yes, and we have not trained staff on reaching out through social media
- c) Unsure
- d) We do not use social media for outreach activities

# SOME PROGRAMS PROMOTE SOCIAL MEDIA USE

- Head Start

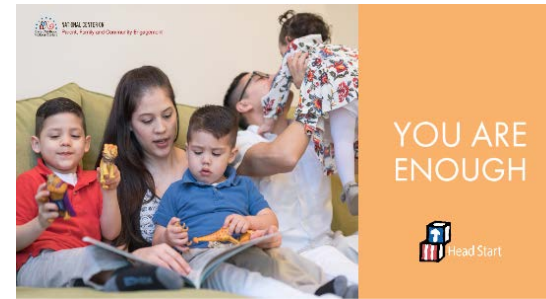
“Partnerships between Head Start and Early Head Start families and their programs are important. Connecting with parents through social media is one way to let them know your program cares and you are still there for them. It shows families that you stand ready to partner with them around their interests, needs, and goals.”



*OHS Early Childhood Learning and Knowledge Center*

# OHS PROMOTES USING SOCIAL MEDIA FOR GENERAL PUBLIC INFORMATION

When used strategically to “support families in uncertain times”





# HEAD START GUIDANCE

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**“Share** these OHS-produced social media messages on your program's platforms to let families know that you care about their well-being during challenging times. **Push out** other positive messages to parents on social media and texting platforms. Virtual communication may include the re-purposing of the Office of Head Start's social media feeds on **Facebook** and **Twitter**.”

*OHS, COVID-19 and the Head Start Community, Programming During Remote Service Delivery, Engaging Families and Children (April 24, 2020)*

# HEAD START: PROGRAMMING DURING REMOTE SERVICE DELIVERY

- There are a number of things Head Start programs can do to support children and families while their communities are maintaining social distance. These resources can be shared with families to support home activities and family health. **Staff should be in regular phone and electronic communication with families to the extent feasible, providing engagement and other program services.**
- “OHS has empowered grantee leadership to make decisions that support Head Start children and families first, and also help others in need. We have full confidence you will do what you can to support your community needs and ensure your program’s mission is still the first priority.”
  - [Planning for Program-Wide Needs](#)
  - [Engaging Families and Children](#)
  - [Supporting Economic Stability](#)
  - [Engaging Community Partners](#)
  - [Remote Home Visiting](#)
  - [Providing Meals, Snacks, and Diapers to Children](#)
  - [Professional Development](#)

# OTHER AGENCIES ...

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- CMS and Telehealth Services in Medicare and Medicaid
- Telehealth: The use of electronic information and telecommunications technologies to support and promote:
  - (1) Long-distance clinical health **care**,
  - (2) Patient and professional health-related **education**, and public health; and
  - (3) Health **administration**.

**Technologies** include videoconferencing, the internet, store-and-forward imaging, streaming media, and landline and wireless communications.

# HEALTH CARE PROVIDERS

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- Under the Health Insurance Portability and Accountability Act (HIPAA), a “health care provider” is a provider of medical or health services and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business: physicians, nurses, clinics, hospitals, home health aides, therapists, other mental health professionals, dentists, pharmacists, laboratories, and any other person or entity that provides health care.
- A “health care provider” is a **covered entity** under HIPAA if it transmits any health information in electronic form in connection with a transaction for which the Secretary has adopted a standard (e.g., billing insurance electronically). See 45 CFR 160.103 (definitions of health care provider, health care, and covered entity).
- Normally subject to penalties for violations of the HIPAA Privacy, Security, and Breach Notification Rules that occur in the provision of telehealth services.

# THESE ARE “NEW NORMAL” TIMES

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- The HHS Office of Civil Rights issued social media guidance directed to health care programs during the pandemic. We may borrow from that guidance to illustrate the different risk levels of using social media.

HHS Office for Civil Rights, *FAQs on Telehealth and HIPAA During the COVID-19 Nationwide Public Health Emergency* (March 20, 2020 ) at 2.

# NOT “GOOD FAITH” USE TRIGGERS ENFORCEMENT

Some examples of what OCR may consider bad faith use of social media to deliver remote services include:

- Use of public-facing remote communication products, such as [TikTok](#), [Facebook Live](#), [Twitch](#), or a public chat room, which OCR has identified as unacceptable forms of remote communication **with program participants** because they are designed to be open to the public or allow wide or indiscriminate access to the communication.

*HHS OCR, Telehealth FAQs at 4.*

# STREAMING PUBLIC INFORMATION

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For example, a provider that uses [Facebook Live](#) to stream a presentation made available to all its participants about the risks of COVID-19:

- (1) Would not be considered reasonably private provision of services; and
- (2) A provider that chooses to host such a public-facing presentation should not identify program participants or offer individualized advice in such a livestream.

*HHS OCR FAQs at 5.*

# WHAT IS “NON-PUBLIC FACING” SOCIAL MEDIA?

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- One that, as a default, allows only the intended parties to participate in the communication. Non-public facing remote communication products would include, for example, platforms such as **Apple FaceTime**, **Facebook Messenger video chat**, **Google Hangouts video**, **Whatsapp video chat**, **Zoom**, or **Skype**. Such products also would include commonly used texting applications such as Signal, Jabber, Facebook Messenger, Google Hangouts, Whatsapp, or iMessage.

*HHS OCR, Telehealth FAQs at 4-5.*



# WHAT MAKES MEDIA “NON-PUBLIC FACING”?

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- Typically, these platforms employ end-to-end encryption, which allows only an individual and the person with whom the individual is communicating to see what is transmitted. The platforms also support individual user accounts, logins, and passcodes to help limit access and verify participants. In addition, participants are able to assert some degree of control over particular capabilities, such as choosing to record or not record the communication or to mute or turn off the video or audio signal at any point.

*HHS OCR, Telehealth FAQs at 5.*

# CONSIDER BENEFITS VS. COSTS - CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

“It is CNCS’s policy to **use social media** when:

- a) OEA has identified a need to engage with the public;
- b) Procedures for establishing a CNCS social media presence have been followed; and
- c) The benefits of using the medium outweigh any costs or risks....”**

**b) Programs (AmeriCorps State and National, AmeriCorps NCCC headquarters and campuses, AmeriCorps VISTA, Senior Corps):**

- Provide assistance and resources in coordination with OEA
- Participate in weekly meetings to disseminate information and receive updates and training
- Provide new account requests to OEA
- Collaborate with OEA, through their account manager(s) and designated alternate account manager(s) to ensure compliance with this policy.

See Corporation for National and Community Service, Policy No. 105: Social Media Policy (Dec. 15, 2017) at 3-4, available at: <https://www.nationalservice.gov/sites/default/files/documents/SocialMedia-2017.pdf>.

# CNCS ON APPROPRIATE OFFICIAL RESPONSES

- Appropriate use:



- Inappropriate use:



See Corporation for National and Community Service, Policy No. 105: Social Media Policy (Dec. 15, 2017) FAQs at 16-17, available at: <https://www.nationalservice.gov/sites/default/files/documents/SocialMedia-2017.pdf>.

# CNCS ON APPROPRIATE LOGO/UNIFORM POSTINGS

## Appropriate Use:



## Inappropriate Use:



See Corporation for National and Community Service, Policy No. 105: Social Media Policy (Dec. 15, 2017) FAQs at 19-20, available at: <https://www.nationalservice.gov/sites/default/files/documents/SocialMedia-2017.pdf>.

# CNCS ON SHARING AGENCY'S PUBLIC MESSAGING

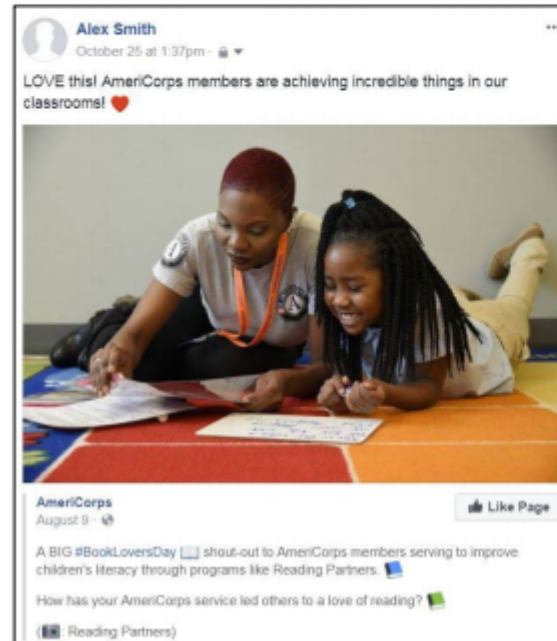
Caution: PII and minor children considerations.

## 5) Can I retweet, share Facebook posts, or promote other official CNCS messages on my personal account?

Yes, you can certainly share the public messaging of CNCS on your social media accounts. There is nothing wrong with retweeting Senior Corps or sharing an AmeriCorps Facebook post. The only exception are those employees described in the Social Media Policy section 4b.

It becomes an issue when you editorialize the content while confirming your position as a CNCS employee in a way that appears to speak on behalf of the agency.

Appropriate Post:



Inappropriate Post:



See Corporation for National and Community Service, Policy No. 105: Social Media Policy (Dec. 15, 2017) FAQs at 16-17, available at: <https://www.nationalservice.gov/sites/default/files/documents/SocialMedia-2017.pdf>.

# TAKEAWAYS FOR COMMUNICATING WITH PROGRAM PARTICIPANTS AND THE PUBLIC

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- Know your funding agency's [COVID-19 guidance](#):
  - What are the flexibilities?
  - How long are they valid for? (PHE, Approp., other?)
  - What modifications must you implement?
  - Have you trained your staff?
  - What types of information can you transmit?
  - Document the services you render through social media
  - Can you be reimbursed for social media activities?
  - Confidentiality: PII and PHI rules still apply
- Know your state and local laws and regulations on social media
- Review your Social Media [Policies and Procedures](#) and modify or approve accordingly. Also, train (and document it)!

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# QUESTIONS?

# CONTACT INFORMATION

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