

Tips For Managing Social Media And International Travel Risks

By **Kelli Hayes and Dwight Myfelt** (July 14, 2025)

In today's global business environment, employee international travel is a routine necessity for many organizations. The evolving landscape of U.S. immigration and border control, however, coupled with the increasing scrutiny of social media activities, presents new challenges for corporate counsel, business owners and human resources professionals.

Understanding the legal framework governing border searches, the implications of social media on immigration status, and the best practices for managing these risks is essential for ensuring compliance and protecting both the organization and its employees.

Legal Framework: Constitutional Rights and the Border Search Exception

The Fourth Amendment of the U.S. Constitution protects individuals against unreasonable searches and seizures. At the U.S. border, however, a significant exception applies.

Federal officers are generally permitted to conduct routine, warrantless searches of persons and items entering the U.S. without reasonable suspicion or probable cause. This border search exception means that employees traveling internationally may be subject to extensive scrutiny, including searches of their electronic devices and, potentially, a review of their social media activity.

Government Agencies and Social Media Review

As it relates to the issuance of visas and admission of individuals into the U.S., several government agencies have been reviewing social media for years, including U.S. Customs and Border Protection and the U.S. Department of State. In fact, for nearly a decade, the U.S. government has been asking individuals intending to travel to the U.S. for their social media handles.

These agencies, and others, review social media as part of visa issuance, initial entry or reentry, status review and revocation, visa renewal, and detection of inconsistent or fraudulent information. Social media activity can also be scrutinized for national security and public safety concerns.

Social Media Activities Affecting Immigration and Travel

Social media posts can have significant implications for employees' immigration status and ability to travel. Activities that may raise red flags include:

- Political or controversial posts, especially those related to monitored groups;
- Evidence of criminal behavior or illegal activities;
- Indications of unauthorized employment or business activities;
- Posts suggesting noncompliance with educational or visa requirements;



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- Financial disclosures inconsistent with visa status;
- Statements or activities inconsistent with the terms of the visa they are seeking; and
- Support for or association with groups of concern to U.S. authorities.

Such posts can result in visa denial, visa revocation or refusal of entry, directly affecting an employee's ability to fulfill job responsibilities that require international travel.

Because U.S. authorities have broad discretion when determining whether to grant a visa or admit foreign-national travelers into the U.S., such travelers are not likely to be successful in invoking the right to free speech protected by the First Amendment.

Employer Rights and Limitations Regarding Social Media

Employers have the right to view the public social media posts of employees, as there are no federal laws prohibiting this practice. Employers should be aware, however, that more than half of U.S. states have enacted laws limiting employer access to employees' private social media accounts.

For example, New York, effective March 2024, prohibits employers from requesting or coercing employees to disclose login information, access personal accounts in the employer's presence or reproduce content from private accounts.

Employers may prohibit social media use during work hours, but broad bans are likely illegal under the National Labor Relations Act, which protects employees' rights to discuss terms and conditions of employment. Employers can limit, however, posts that constitute unlawful harassment, disclose confidential information, or are egregiously offensive or knowingly false.

First Amendment and State Law Protections

While the First Amendment does not apply to private employers, some states provide additional protections for employees' political activities and lawful off-duty conduct.

For instance, California and Colorado protect employees from adverse action based on lawful off-duty conduct, while New York and California prohibit employers from restricting political participation.

In states without such protections, the at-will employment doctrine generally allows employers to discipline employees for social media activity that violates company policy.

Managing Risks: Best Practices for Employers

To mitigate the risks associated with employee international travel and social media activity, employers should take the following steps.

- Establish and disseminate a defensible, understandable policy outlining acceptable social media use, both in and out of the workplace.
- Provide training on the potential immigration and travel risks associated with certain types of social media posts, especially for employees who travel internationally.

- Prepare employees for possible device searches at the border, as refusal to comply may result in denial of entry for foreign nationals or seizure of devices from U.S. citizens.
- If an employee is refused entry or loses status due to social media activity, prompt legal action is critical to regaining status or addressing the situation.
- Stay informed about changes in federal and state laws regarding employer access to social media and employee protections.

Steps To Take if an Employee Is Refused Entry or Loses Immigration Status

Establish Communication and Immediately Assess Situation

When an employee is refused entry to the U.S. or loses immigration status as a result of social media activity, employers must act swiftly and methodically.

The first step is to establish clear communication with the affected employee to gather all relevant facts. This measure includes understanding the specific reasons cited by border or immigration authorities, the nature of the social media content in question, and the current location and status of the employee.

Thoroughly Document Incidents

Documenting all communications and actions taken in response to an incident where an employee is refused entry or loses immigration status due to social media activity is essential for legal compliance and risk management.

Immigration matters often involve complex interactions with government agencies, and detailed records provide a clear account of the employer's response. Such records can be critical if the situation escalates to legal proceedings or if there is a need to demonstrate compliance with relevant laws and regulations.

Support Employee and Address Logistical Issues

Depending on the circumstances, the employee may require immediate assistance, such as arranging for return travel to, or temporary accommodations or support in, their home country.

Employers should also assess the impact of the employee's inability to travel or work in the U.S. on business operations and make contingency plans to address any disruptions.

Collect Evidence for Internal and External Review

Thorough documentation serves as evidence in the event of an audit, investigation or dispute. Documentation allows employers to show that they acted promptly, followed established procedures, and took reasonable steps to support the employee and protect the organization.

This is particularly important if the employee challenges the employer's actions or if government authorities request information about the incident.

Accurate records enable legal counsel to assess the situation effectively and provide informed advice. Legal professionals rely on a complete and factual account of events to determine the best course of action, whether that involves appealing a decision, seeking reinstatement of the employee's status or addressing misunderstandings related to social media activity.

Documentation ensures that nothing is overlooked and that all relevant details are available for review.

Maintaining a detailed record will help employers manage the operational impact of the incident. It allows for better coordination among HR, legal and management teams, and supports contingency planning to address any disruptions caused by the employee's inability to travel or work.

Documentation also aids in the review and updating of internal policies to prevent similar incidents in the future.

Comprehensive documentation also reflects the employer's commitment to fair treatment and due process. It shows that the organization took the incident seriously, provided appropriate support to the employee and made decisions based on facts rather than assumptions. This documentation can help mitigate potential claims of discrimination or unfair treatment, especially if the incident involves sensitive issues such as social media activity or immigration status.

In summary, documenting all communications and actions taken in response to an immigration incident is crucial for legal protection, effective decision-making, operational continuity and demonstrating good faith. It provides a reliable record that can be used to support the employer's position, facilitate legal counsel, and improve future policies and practices.

Review and Update Internal Policies

The incident should prompt a review of the company's social media and international travel policies. Employers should evaluate whether current policies adequately address the risks associated with social media activity and international travel, and whether additional training or guidance is needed for employees, especially those whose roles require cross-border movement.

Reinforce Employee Education on Risks and Best Practices

Employers should use the incident as an opportunity to reinforce education and training for all employees regarding the potential immigration and travel risks associated with social media activity. This includes clear communication about the types of posts or associations that may draw scrutiny from immigration authorities and the importance of compliance with both company policy and applicable laws.

Monitor the Situation and Follow Up

Continue to monitor the status of an affected employee's case and maintain regular communication with legal counsel and relevant authorities.

If the employee's status can be restored or if reentry is possible, facilitate the process. If not, ensure that all actions taken are consistent with company policy and applicable law,

and provide appropriate support to the employee as needed.

Summary of Key Steps

First, communicate with the affected employee immediately to gather facts and determine whether to inform legal counsel.

Second, document all actions and communications between the employee and the government.

Third, provide logistical and emotional support to the employee. From there, an employer should review and update any policies as necessary, and review and reinforce employee education about social media and travel risks.

Employers can respond effectively to incidents involving refusal of entry or loss of immigration status due to social media activity by following these steps, thereby minimizing business disruption and reducing the risk of future occurrences.

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