

PBPA Podcast Transcript
Episode 32– Pause Before You Post: Nonprofits and
Social Media Legal Considerations
(15:03 minutes)



Sireesha ([00:00](#)):

Volunteers and employees engage nonprofits via social media in multiple ways. Volunteers may take pictures of themselves volunteering at an event and post them on their social. Or a board member who lists their affiliation with the (C)(3) in their profile may express their support for a particular political candidate. And many organizations have a specific employee in charge of managing their social media accounts. So many ways to engage and so many legal considerations. Shelley Hildebrand will be breaking down those considerations and will share some helpful guidance in this episode of the PBPA Podcast.

Sireesha ([00:49](#)):

Hello and welcome to the PBPA Podcast. In each episode of the PBPA Podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at pbpatl.org. Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel, contact your attorney for guidance on your nonprofits' specific situation.

Sireesha ([02:00](#)):

Shelly Hildebrand is an Atlanta attorney with over 20 years of experience with employment-related litigation. She has also provided trainings on such topics as youth programs, record retention, and social media. Thanks so much for being here, Shelly.

Shelley ([02:17](#)):

Thanks so much for having me. I'm so passionate about all things employment law, and especially with regards to social media. So, so happy to have the opportunity to discuss it with your listeners.

Sireesha ([02:28](#)):

To start off with, let's speak briefly about the employee at the nonprofit who manages the social media accounts for the organization. They're the ones who have the passwords and are responsible for the organization's posts. What should nonprofits keep in mind in that regard?

Shelley ([02:47](#)):

I think a lot of times like this has just, you know, grown up over the years, and you might have put it into someone's job category, so maybe part of one of your marketing people, you just decided that you're gonna be their social media. But you need to make sure that you have that carved into the job description with those expected job duties. What you expect of that employee. Um, what they should and should not pose what the objective of your social media presence is. You should make sure that more than one employee would have the password in case something would happen to the major

employee. And it's always a good idea, I think, to change the passwords when any employee, uh, with the password leaves the company.

Sireesha ([03:38](#)):

Yeah, those are great points that these roles tend to develop very organically within an organization, but every now and then, they need to stop and look at it with intention.

Shelley ([03:47](#)):

Yeah. Make sure that your expectations have been set and that the, that, that these people know what the role is and know what the expectations are so that, that it's defensible. If they do something wrong, then they should have known that it was wrong. I mean, that's what I look for in anybody's job description. Any task that you have somebody perform, they need to know what their, the expectations are of that task. Just to be fair, really.

Sireesha ([04:14](#)):

And to that point, I I would like to mention very briefly that the nonprofits and also the employee who might be managing the social media accounts should be particularly, particularly aware of some of the restrictions around political activity and nonprofits. The posts that they make should not violate the nonprofit's C3 status. For example, you know, don't post something on your nonprofit's, uh, social media that says, Hey, go vote for this candidate and do not vote for that candidate. Um, but I'm going to drop an article link on this episode's page that clarifies those restrictions a little bit more. Now, Shelly, sometimes employees engage with each other through their employer's social media account. For example, um, on LinkedIn employee might respond to a company post, or employees might chat through comments. Should nonprofits be concerned about employees engaging with each other via the company's social media page?

Shelley ([05:20](#)):

You should, yes. In the sense that a social media page, uh, the official corporate social media page is an extension of the office. So all of the, the conduct that you would have in your office, the expectations of the conduct in the office should be also in that space. So, you know, you should be concerned about possible harassing comments, you know, maybe retaliatory comments. Um, so any conduct that could happen in the office can also happen in that online aspect as well. Well,

Sireesha ([05:58](#)):

So talk to us about social media policies. Would that be addressed in a social media policy and do all organizations need one? What else should be in those policies?

Shelley ([06:08](#)):

<laugh>, I'm big fan of policy. I mean, I think, you know, you can't enforce anything unless you have it in writing so that your employees can, you know, have a reasonable expectation of what's expected of them. Um, so your social media, you could just revamp all of your policies and add social media to be an extension of the office. So, "everybody will treat each other with respect in the office and on the social media pages". Um, you know, if you have an anti harassment policy, which I strongly advise you have, um, that also goes for your social media page, inclusivity policy, whatever that policy is, that should also be included in social media. Um, anything that you can, any misconduct that can happen in the office can also happen, you know, in the online aspect as well. So you wanna be mindful of that and you

wanna make sure that you either have a separate policy specific to social media or as I said, you can just kind of revamp your existing policies to include social media.

Sireesha ([07:14](#)):

Now let's switch to talking about the personal accounts, um, personal social media accounts of employees. Can and should nonprofits seek to limit what employees post on their personal accounts?

Shelley ([07:29](#)):

They certainly can. I mean, there's not a lot of laws in, Well, I don't think there's any law in Georgia that really in, uh, prohibits an employer, um, from dictating anything about employees' personal accounts. I don't think it's a good idea. Um, I think that the biggest thing is proprietary information. Um, they should know that they should not post proprietary information on their personal social media account, but I think an employer can protect themselves further in that any employee with proprietary information should know that they have proprietary information in that it should be communicated to that employee that it is proprietary or it should be marked that it's "proprietary". I think any other restrictions are, could be violations of other, of common law or federal law. And I think it's, I I'm not sure how reasonable or how PR friendly anything further would be, um, other than some kind of trade secret or proprietary information.

Sireesha ([08:38](#)):

Yeah. Also along those lines, I want to once again point out there, there are some nuances associated what with posts that nonprofit leaders might make regarding political activity. Of course, employees, nonprofit leaders are entitled to their personal views and political activity, but there are some disclaimers you might want to encourage very vocal employees or nonprofit leaders to make, just to ensure that the line between the nonprofit and the nonprofit leaders not blurred, [and] there's not too close of an association between the C3 and the political statements that that individual might be making. And for that too, I'm gonna drop an article on the podcast page that goes into a bit more detail about that. Now, Shelly, we're still talking about employee personal accounts. Can a nonprofit terminate an employee based on what they put on their personal social media posts?

Shelley ([09:41](#)):

Well, in Georgia, you can terminate an employee pretty much for any reason, as long as it's not an illegal reason. So absolutely a nonprofit, uh, could terminate an employee based on a social media post, you know, provided that it's not discriminatory or any other way illegal.

Sireesha ([10:00](#)):

And employers often look at the social media accounts of a job applicant, um, prior to making a hiring decision. Can you talk to us a bit about that, using social media in the hiring process?

Shelley ([10:15](#)):

Well, I'm really against it <laugh>. Um, there's something, you know, at that, what I always tell people in the trainings that I do is once you, you know, Google somebody or find a social media page and you learn things about those people, you can't unlearn them. And a lot of things that, that you learn are that they are, um, a member of a protected class or classes. And so once you know that and then you don't hire them, you have opened up yourself to a possible claim. Now, if you would like to use social media, and I know that, you know, um, some people that I've worked with do really value using social media,

um, in the employment process. And I think if you wanna use it, it should be a third party. And the people that are actually in, in charge of the hiring decision should not get that information in any way. Um, it should, should just be maybe a flat score or something like that. Um, we did it actually internally, but it was just like a, you know, internal like HR function and maybe that person didn't get forwarded to the actual hiring committee. But, um, so it's, it's something that you really wanna be careful with. I think it's more trouble than it's worth. But there are, you know, a lot of background check companies will, you know, do social media background checks as well. So you can save that for that part of the, the process.

Sireesha ([11:52](#)):

Okay. That's really interesting. That's good information. Cuz I know that many people just, will Google a person's name casually not thinking about those potential repercussions.

Shelley ([12:02](#)):

Yeah, and it's, it's one of those things, it's like once you know it, then you gotta prove that you didn't make the decision based on it and there's no way to unlearn it.

Sireesha ([12:11](#)):

And finally, could you provide some clarification on what platforms are "social media"? There's Facebook, Instagram, Twitter, LinkedIn, those are the ones most of our nonprofits are familiar with and engage with themselves. Um, but what about other communication forms, like Teams, Slack or other chat features?

Shelley ([12:34](#)):

Those are actually, I, I wouldn't call them social media. Um, you know, I know something like Zoom is like a conferencing platform. Um, things like Teams and Slack are, are just chat features. But those are, in my opinion, and I don't think we've had a lot of, uh, litigation on this yet. But I think that those are even more integrated into the office space because most people are using those every day. Um, because, uh, you know, we use them just to chat with people. If we're working on a project, you know, I'm at my desk and I'm typing in, I'm typing and I have this question, and so I just pull up "Anna" on my, you know, Teams and I message her and she messages me right back. And then there's a slippery slope where you start talking about getting lunch and you know, how your manager was mean to you. And, I think, when you're using those kind of platforms with the chat and things like that, that people are using every day as really a part of a work tool, I think you need a, you do definitely need a clear policy as to what those expectations are. And one thing you need to also learn with those is what the company's records retention are. Um, so you know how long those records are out there and being stored.

Sireesha ([13:56](#)):

Oh, wow. So, those chat features are probably even more closely associated with just being the workplace.

Shelley ([14:04](#)):

Yeah. Yeah. They are. They're like your email system really. That's what they become.

Sireesha ([14:08](#)):

Well, Shelley, those are all the questions I have today. Thank you for providing us with all this great information and for sharing your insight and expertise with us.

Shelley ([14:17](#)):

Well, thank you so much. It was my pleasure.

Sireesha ([14:21](#)):

We hope that you found this episode of the PBPA Podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.