

# Dealing with employees' defamatory online attacks: quick guide for TX employers

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*Employers are more susceptible to online attacks than ever before. Disgruntled employees have numerous avenues at their disposal to air their work-related grievances. They can use their personal social media accounts to publish and share defamatory messages and images with tens of thousands of people. Influential job-review websites allow anyone with an e-mail address to post anonymous reviews about an employer. Read on to find out what you can do to minimize the damage.*

## ***Free speech vs. defamation***

The First Amendment to the U.S. Constitution protects people's opinions posted online, including anonymous speech. Employers can take action to have an employee's online content removed, however, if the grievance runs afoul of the defamation laws or interferes with business contracts or trade secrets.

First, you should closely examine the website hosting the unlawful content to see if the employee's posting might have violated the site's policies. Ideally, the website will have procedures for taking down the content. Of course, if you know the online poster's identity, you can always ask him to take down the content or have an attorney do so on your behalf. If necessary, the attorney can file suit to protect your business and reputation.

But what if the unlawful content was posted anonymously? Fortunately, there are ways to "unmask" the individual through a series of carefully crafted subpoenas to the hosting website and the owner of the poster's IP address. The process will require an attorney's help. Here are some additional considerations:

- Before you decide to pursue the takedown of the online content, you should think about your approach so you can avoid any further social media backlash. The last thing you want to do is to trigger more negative publicity.
- Ask your attorney about what happens if the employee files counterclaims to your lawsuit, which can result in court costs, attorneys' fees, and maybe even punitive damages for your business in jurisdictions with anti-SLAPP (Strategic Lawsuits Against Public Participation) statutes.
- Be sure your efforts to remove online content aren't retaliatory against any protected activity in which the employee may have engaged.

## ***Positive approach***

You can stay ahead of future social media problems by making sure your handbooks are updated regarding employees' online postings about your company. You also can minimize the damage done by a negative review or posting by creating positive content or lawfully encouraging your employees and customers to post positive reviews online. That way, the effect of the negative content can be minimized or discredited.

Dealing with employees' online content is a nuanced area of the law that requires cautious navigation. If you're facing such a problem, you should seriously consider turning to an experienced employment law attorney to help you navigate the multitude of issues that can arise.

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