

# Developments in Employment Law: Social Media, New ADA Regulations, and Pay Equity

United Educators Roundtable

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Wednesday, September 29

1:00–2:15 p.m. EST

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## Speaker Biographies

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**Richard A. Paul** is a founding partner of Paul, Plevin Sullivan & Connaughton in San Diego. He has practiced employment and education law for many years, has served as an adjunct professor of law, and has lectured at various law schools. He frequently writes and speaks on a wide variety of employment law topics, and also provides on-campus training for faculty and other employees at both private and public higher education institutions. Paul received his undergraduate degree from Valparaiso University and his JD from Stanford Law School.

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**Kathleen A. Rinehart** is a partner at Whyte Hirschboeck Dudek in Milwaukee, where she heads the education practice and specializes in employment law. She is a member of UE's Legal Advisory Committee, serves as outside general counsel to several higher education institutions and K-12 schools, and conducts on-campus training on employment law and other issues. Before attending law school, Rinehart was a teacher in Illinois. She presents regularly at seminars on education and employment law topics. She received her bachelor's and law degrees from Marquette University and her MAT in History from the University of Chicago.

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**Hillary Pettegrew** (moderator) is a risk management counsel for United Educators and previously served as a UE claims counsel, handling many employee and student claims against UE members. Before joining UE, she was a writer/editor at Research Institute of America Group and practiced law at a Washington, D.C., law firm, where she focused on employment litigation. Pettegrew received her undergraduate degree from Colgate University and her law degree from Northwestern University School of Law.

## Roundtable Agenda

### **Part 1 – Monitoring Employee Use of Social Media**

- Checking Facebook during the hiring process
- Employee misconduct on Facebook
- Harassment on Facebook

### **Part 2 – Amendments to the Americans with Disabilities Act**

- Expanded definition of “disability”
- New construction of “major life activities”
- Effect of “mitigating measures”
- Episodic and “in remission” impairments

### **Part 3 – Gender Equity in Faculty Pay**

- Effect of Lily Ledbetter Fair Pay Act
- Implication of the Wal-Mart case
- Recommendations for gender pay equity studies

## Resources

### Sample Social Media Policies and Guidelines

- **DePaul University**

[brandresources.depaul.edu/vendor\\_guidelines/g\\_personalsite.aspx](http://brandresources.depaul.edu/vendor_guidelines/g_personalsite.aspx)

DePaul's guidelines for personal postings on social media sites indicate that employees may identify themselves as DePaul employees but should state their views are their own, not official views of the university. The guidelines further urge employees to be civil when posting because the material may reflect on DePaul notwithstanding any disclaimers. In addition, the university cautions employees that "you are legally liable for what you post" and that because many employers conduct web searches of job candidates when hiring, employees should take care "that what you post today will not come back to haunt you."

- **Seattle University**

[www.seattleu.edu/marcom/Inner.aspx?id=53083](http://www.seattleu.edu/marcom/Inner.aspx?id=53083)

This policy sets out the university's "policies and guidelines for official and personal use of social media sites" for employees and provides links to the university's official presence on Facebook, Twitter, Flickr, and YouTube. Prior supervisory permission is required for an employee to take part in any social media "involving" the university. As for strictly personal use of social media, the policy states that Seattle University "does not monitor personal websites but will address issues that violate established HR, Editorial, Graphic and Social Media guidelines."

- **University of Minnesota**

[www.webdepot.umn.edu/social\\_guidelines\\_new.php](http://www.webdepot.umn.edu/social_guidelines_new.php)

The University of Minnesota's guidelines apply to "official" university business and include various links, such as one to a discussion of best practices in posting. The guidelines also refer users to other relevant policies, such as those involving the code of conduct, confidentiality of information, and copyright and intellectual property issues.

- **Washington University in St. Louis**

[www.wustl.edu/policies/socialmedia.html](http://www.wustl.edu/policies/socialmedia.html)

Washington University makes clear that it encourages members of its community in their use of social media on official university sites. The policy states that while it does not pre-screen such postings, it reserves the right to remove any that it deems to violate the policy guidelines, and it lists some reasons why posting may be removed. It also contains links to other relevant policies, such as those governing the use of the university's logos and domain name.

## UE Resources

- **You Asked UE, “Social Networking Policies for Employees” (Feb. 2010)**  
[www.ue.org/Libraries/Shared\\_RML/You\\_Asked\\_UE\\_Social\\_Networking\\_--\\_2-10.sflb.ashx](http://www.ue.org/Libraries/Shared_RML/You_Asked_UE_Social_Networking_--_2-10.sflb.ashx)  
This concise risk management publication addresses members’ questions about the advisability of an employee social media policy.
- **Audio file and reference materials for Feb. 2010 telephone roundtable “Monitoring Student Electronic Communications”**  
Audio Files:  
[www.ue.org/Libraries/Shared\\_RML/Roundtable\\_Monitoring\\_Student\\_Electronic\\_Communications\\_--\\_Audiostream\\_02-10.sflb.ashx](http://www.ue.org/Libraries/Shared_RML/Roundtable_Monitoring_Student_Electronic_Communications_--_Audiostream_02-10.sflb.ashx)  
Resource Files:  
[www.ue.org/Libraries/Shared\\_RML/Roundtable\\_Monitoring\\_Student\\_Electronic\\_Communications\\_--\\_Resources\\_02-10.sflb.ashx](http://www.ue.org/Libraries/Shared_RML/Roundtable_Monitoring_Student_Electronic_Communications_--_Resources_02-10.sflb.ashx)  
While this roundtable focused on monitoring student rather than employee electronic communications (and was not limited to social media use), some of the same principles apply. In addition, the resources include a number of good general computer use policies that govern employees as well as students.
- **“Paying by the Rules: Gender Equity in Salaries,” and “Practical Advice on Performing a Salary Equity Study,” *Employment Action* (spring 2001)**  
[www.ue.org/Libraries/Shared\\_RML/Employment\\_Action\\_Paying\\_by\\_the\\_Rules\\_Gender\\_Equity\\_in\\_Salaries\\_--\\_Spring\\_2001\\_Vol\\_4\\_No\\_2.sflb.ashx](http://www.ue.org/Libraries/Shared_RML/Employment_Action_Paying_by_the_Rules_Gender_Equity_in_Salaries_--_Spring_2001_Vol_4_No_2.sflb.ashx)  
This 2001 UE publication still offers helpful guidance for institutions considering pay equity studies, including a discussion of different experiences at the Massachusetts Institute of Technology, the University of Washington, and Virginia Commonwealth University, as well as practical suggestions on conducting such a study from UE select counsel Mike Vartain.

## Other Resources

- **Americans with Disabilities Act, as revised by the ADA Amendments Act of 2008**  
[www.ada.gov/pubs/adastatute08mark.htm](http://www.ada.gov/pubs/adastatute08mark.htm)  
This document from the Department of Justice displays the text of the ADA with the 2008 amendments highlighted (additions in bold type and deletions in strikeout)
- **Equal Employment Opportunity Commission (EEOC), “Summary of Key Provisions: EEOC’s Notice of Proposed Rulemaking (NPRM) to Implement the ADA Amendments Act of 2008 (ADAAA)”**  
[www.eeoc.gov/laws/regulations/adaaa-summary.cfm](http://www.eeoc.gov/laws/regulations/adaaa-summary.cfm)  
This EEOC notice outlines the major provisions of the ADA Amendments Act.

- **EEOC, Questions and Answers on the Notice of Proposed Rulemaking for the ADA Amendments Act of 2008”**  
[www.eeoc.gov/policy/docs/qanda\\_adaaa\\_nprm.html](http://www.eeoc.gov/policy/docs/qanda_adaaa_nprm.html)  
This EEOC publication uses a Q & A format to review the agency’s proposed regulations implementing the ADA Amendments Act.
- **Fisher & Phillips, *Education Labor Letter* (Nov/Dec. 2008), “Don’t Be Handicapped by the ‘New’ ADA”**  
[www.laborlawyers.com/showarticle.aspx?Type=1119&ArticleType=-1&NewsLetterType=3388&Show=10959](http://www.laborlawyers.com/showarticle.aspx?Type=1119&ArticleType=-1&NewsLetterType=3388&Show=10959)  
This law firm article, published just before the amendments to the ADA became effective, summarizes the major changes in the law from the perspective of educational institutions (noting that they could expect to receive more requests for accommodation from both employees and students).

## Education's Own Insurance Company



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