



Essroc Concrete Plants Achieve Green-Star Certification

Six Essroc Ready Mix concrete plants in the Mid-Atlantic (Virginia) region have been awarded Green-Star certification by the National Ready Mixed Concrete Association (NRMCA). The program audits and certifies ready mixed concrete plants for environmental sustainability.

“Essroc and Italcementi are globally committed to environmental sustainability,” said Alex Car, Essroc senior vice president of construction materials. “The Green-Star Program is an important milestone toward our ongoing sustainability efforts.”


The NRMCA Green-Star Program was developed to support the efforts of the ready mixed concrete industry toward environmental excellence through the recognition of the use of Environmental Management Systems as a tool for environmental benchmarking and continual improvement. The program also provides a means to recognize those companies who adhere to essential principals of the environmental and sustainability movement of the concrete industry.

“Essroc Ready Mix is now among less than three percent of the U.S. ready mixed concrete facilities that have attained this national recognition.”

NRMCA Green-Star Program was created in collaboration with the Environmental Protection Agency’s (EPA) GreenHighways Partnership. “Our team is vastly aware of our responsibility to protect and maintain the environment,” said Brent Edwards, Essroc Ready Mix vice president of construction materials - U.S. Region.

“Essroc Ready Mix is now among less than three percent of the U.S. ready mixed concrete facilities that have attained this national recognition. I am proud of our team’s efforts and accomplishments to achieve this important certification.”

Each Green-Star recipient must satisfy a rigorous, structured certification process capable of withstanding third-party oversight. The Essroc Virginia plants that are Green-Star certified include: Bealeton, Front Royal, Fredericksburg, Stephenson, Leesburg and Strasburg.

In addition to the six Virginia concrete plants receiving Green-Star Certification, 13 additional plants in Essroc’s Mid-West region achieved Green-Star certification. They include: Charleston, W.W.; Winfield, W.Va.; Huntington, W.Va.; Wheeling, W.Va.; Parkersburg, W.Va.; New Martinsville, W.Va.; Morgantown, W.Va.; Gallipolis, Ohio; Braddock, Pa.; Johnstown, Pa.; Pittsburgh, Pa.; State College, Pa.; and Bluffton, S.C. 

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Warrenton	October 2, 3, 4	

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Richmond Board of Realtors Present 2012 Housing Market in Central Virginia

By J. Keith Beazley,
Director of Industry Services

"The outlook for 2012 is an improving economy combined with continued low mortgage rates that should lead to improvements in the local housing market as the year progresses" stated Laura Lafayette, Chief Executive Office of the Richmond Board of Realtors, in a special program to the Central Virginia Concrete Advisory Council in April. The projections of the Richmond Real Estate Market were part of a program presented to the Central Virginia Concrete Advisory Council by special guests Scott Ruth, President, and Laura Lafayette, CEO, of the Richmond Board of Realtors.

Scott Ruth, President of the Richmond Association of Realtors, was installed as President in 2012. Scott graduated from the University of Charleston and has been involved in the real estate industry of 11 years.

He is the Broker of the Long and Foster Tuckahoe Office and oversees the activity of over 80 agents that work out of the office. Scott enjoys helping agents and clients find success in the real estate business and activities. Market studies and advanced technologies are a large part of his area office.

Laura Lafayette, Chief Executive Officer, of the Richmond Board of Realtors, oversees the external relations of the organization including governmental affairs, public relations, marketing and development. Currently Laura serves of the Board of Better Housing Coalition and the Richmond Habitat for Humanity as well as the Governor's Housing Policy Work Group. Laura received her BA in Religion from the College of William and Mary.

Scott Ruth stated "We have to reestablish consumer confidence in our industry. When we get consumer confidence back, people we start buying



"We have to reestablish consumer confidence in our industry. When we get consumer confidence back, people we start buying homes again and the whole economy will improve."

homes again and the whole economy will improve. Also, a building of trust and a relationship with consumers is a key element."

A series of graphs and charts in the presentation presented the picture of the market for the past five years. Laura Lafayette stated the 2005 pace was unsustainable and the current market is moving toward a more balanced, healthier market. Sales increased in every 2011 quarter in the state and region except for the second quarter. The outlook for 2012 is an improving economy combined with the low mortgage rate and this should lead to improvements in the local housing market as the year progresses.

Scott Ruth pointed to the strong activity in pending sales and the sales momentum for the first quarter. Ruth stated that the Richmond area is experiencing activity pockets and sales in some areas have a strong demand and

some softer depending on the area. Financing is causing some problems with higher qualification standards but monies are available with excellent credit, income and asset documentation and down payments of 5, 10 or 20 percent.

The professional presentation was of great benefit to understanding the current state of the Richmond Real Estate market. The Concrete Industry expansion of business of 2012 will largely depend of the comeback of the housing market. The presentation stating the improvement of the housing market for 2012 and increased sales in new homes is a very good sign.

The building industry as a rule leads the country back to an expanded economy. The Board of Realtors presentation helped stimulate a picture of a positive level of activity and the "light at the end of the tunnel" for our industry. 🚧

Southwest Council Members Help Judge ASCE Competitions

By Bob Nablo,
Director of Industry Services

The annual regional ASCE student competitions for 2012 were recently held at Virginia Tech, and once again the VRMCA Southwest Virginia Advisory Council was asked to supply judges for the concrete-related events. The event moves around the mid-Atlantic region each year, with student chapters entering in various design-build competitions. The event normally lasts two days, with one day devoted to hands-on competition and a second day for judging presentations and displays. It is necessary to have access to a suitable outdoor site with room for the events, lunch, and a lake or large pond for the concrete canoe races.

This year the SW Council offered four judges. Gary Pasquarell of F&R helped judge the concrete canoe contest and George Kuhn of Chandler Concrete and Bob Nablo of VRMCA judged the concrete bowling ball event. David Stallings of Chandler Concrete was scheduled to also judge, but accepted a new position with a non-member company and had to withdraw. Dr. Randel Dymond of the Va. Tech Civil Engineering Department organized the event and assigned the judges. The schools sending teams included Va. Tech, VMI, UVa, George Mason, West Virginia, Marshall, Bluefield State and West Virginia Tech, among others.

SW Council members were familiar with the concrete canoe competition, but were not familiar with some of the other events, such as the “green” concrete bowling ball and mini golf competitions. The weather cooperated nicely, and a full day of competition was completed. Members familiar with the concrete canoes know that teams must build, and race, canoes of a specified size and composition, with emphasis on recycled materials, floatability and structural integrity. The same is true for the concrete bowling ball—except for floatability! The bowling balls must be of a certain size and weight, must be made of a certain percentage of recycled materials, and



must be functional. Teams bowl outdoors on a grass lane, and scoring is the same as “regular” bowling. Emphasis is on “green” materials and construction. As you might expect, there are moments of humor, and also moments of intense competition. Our judges thoroughly enjoyed themselves, and it was an excellent opportunity to present our industry to major universities and students. 🚚

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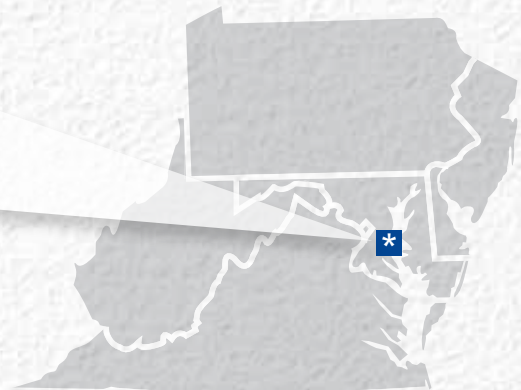
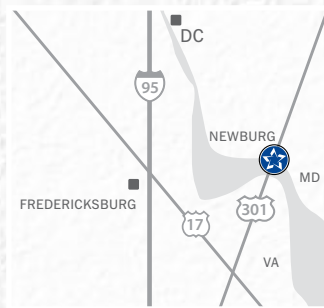
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Building Green with Concrete Workshop Returns to Northern Virginia for Fifth Year

By Hessam Nabavi,
Director of Industry Services

NVCAC is sponsoring the 5th Annual Building Green with Concrete Workshop in the office of WSSI in June. This year's workshop will be all about concrete paving. Speakers will be discussing the latest in sustainable concrete paving and solutions for paving roads and parking surfaces. This year's theme is "Let's Pave IT to Last a Lifetime." This unique workshop is targeting decision makers in various public and private sectors, and it will give them an opportunity to learn about the proven methods to make roads and parking lots more environmentally sound and long lasting. It will also create an environment to network and exchange ideas between design and construction professionals and industry leaders, regional and national concrete and cement industry trade associates.

Prior year attendees offer positive feedback about the event.

"The information covered in the workshop was current and interesting, and the topics kept under an hour so the pace was perfect. I learned about the benefits and longevity of concrete as a paving material and was especially excited to learn that I can decrease the quantity of site lighting needed, thus offsetting any possible upfront additional cost of concrete over asphalt while saving energy for the life of the project. I picked up a nice sample of pervious concrete to show my peers at the office, and this is very timely as we have just bid our first project using pervious concrete and have many who don't understand it. Wetland Study and Solutions building was the perfect setting. I didn't know that this building was also tilt-up," said Sandra Hunter, AIA, LEED AP with LC Department of Construction and Waste Management, Loudoun County Government.

Operations Manager with Rockingham Redi-Mix Concrete, Jonathan Harris commented, "The attendees from Rock-



The 5th Annual Building Green with Concrete Workshop

"Let's Pave IT to Last a Lifetime"
June 21st, 2012
7:15 a.m. to 3 p.m.
Wetland Studies and Solutions Inc.
Gainesville, Virginia

ingham Redi-Mix and our guest found the workshop to be both informative and interesting. All of the topics were timely and very relevant to recent changes in the industry. As a concrete producer, I was especially excited to see VRMCA taking the opportunity to educate architects and engineers on the advantages of concrete pavement, ICFs, decorative concrete, and tilt-up construction. The networking opportunities were also significant and very beneficial."


This year's workshop will cover a number of topics, including:

- Life-Cycle Analysis (LCA) and Life Cycle Cost Analysis (LCCA) (Phil Kresge, Senior Director of National Resources for the National Ready Mixed Concrete Association)
- The Sustainable Roads: Long Term Benefits of Alternate Pavement Bidding in Missouri, (John Dona-

hue, P.E., Construction and Materials Liaison Engineer, Missouri Department of Transportation)

- Pervious Concrete as Your Stormwater Management Systems, (Matt Cockerham, Pervious Concrete Craftsman, North Star Foundations)
- Sustainable Roads: Missouri's Experience with Various Concrete Overlay Types, (John Donahue, P.E., Construction and Materials Liaison Engineer, Missouri Department of Transportation)
- Concrete Advantage in Parking Lot, (Phil Kresge, Senior Director of National Resources for the National Ready Mixed Concrete Association (NRMCA))
- Tour of 14,000 SF. Pervious Concrete Parking Lot and the LEED Gold Certified Building.

The Building Green with Concrete Workshop traditionally has been well attended. We are expecting over 100 Engineers, Architects, VDOT, State and County Officials, Owners and Developers in attendance. Sponsorship opportunity will also be available on a first come basis. Limited space is available. So, get ready, grab your calendar and save the date!

Additional information on the event will be available soon. 

Make Plans Now to Attend the 2012 VRMCA Spring Convention

The VRMCA Spring Convention will be held May 20 - 22 at The Greenbrier Resort located in White Sulphur Springs, West Virginia.

The Convention kicks off with a welcome reception on Sunday night.

On Monday night, attendees will gather for a reception and group dinner.

The golf tournament will take place on Monday with a shotgun start at 1 p.m.

Members who played golf at the Hell's Point Golf Club during the 2011 Fall Convention are being offered a \$100 credit that can be applied to golf at the Greenbrier. Both the on-line registration and the mail in registration have this credit available for you to claim.

Monday offers a sporting clay shooting beginning at 1 p.m. as well.

Non-shooters, non-golfers and significant others in attendance, we have



a combined event set up just for you beginning at 2:00 PM. On the beautiful balcony of the Spring Room we will hold a private exhibit on the ancient sport of falconry. You will get the opportunity to interact with the Greenbrier's trained hawks and falcons as well as learn the history behind this sport of kings, which has been performed for over 4,000 years. Following the Falconry exhibit, enjoy a wine tasting provided by The Greenbrier Sommelier and indulge in the delicacies of an antipasto display featuring a vari-

ety of meats, cheeses, crudites and breads.

The Virginia Ready Mixed Concrete Association is now accepting sponsors for our 2012 Spring Convention. Company sponsorship is \$250. In recognition of your sponsorship, your company name and logo will be displayed on a large sign to be placed in prominent locations throughout the convention. We will also

recognize all sponsors in an announcement at the VRMCA spring convention, in the VRMCA newsletter following the convention and on our website.

To register for the event or to sign up as a sponsor, visit the association website at www.vrmca.com.

Direct any questions to Raphael Snably at 434/977-3716 or email him raphael.snably@easterassociates.com.

We look forward to seeing everyone in May! 🚚

SWCAC Hosts Lynchburg Seminar for General Contractors

As a follow-up to the very successful breakfast seminar in Roanoke for General Contractors, the Southwest Virginia Advisory Council hosted a second seminar in Lynchburg. The concept for "What Contractors Should Know About Concrete" was a panel discussion featuring a representative from each of the producers and suppliers in the Council, plus a structural engineer. Each panelist gave brief remarks about their contributions to proper ready-mixed concrete design and placement, and then answered questions from the audience. An audience of twenty-two squeezed into a small private room at a Lynchburg restaurant, enjoyed a pleasant breakfast and then settled in to listen to the presentation.



Sam Woolwine, Vice-Chair of the Council, moderated the panel. As the representative from Boxley Materials he also spoke on the role of aggregates in concrete mixes. Other panelists were Larry Necessary (Roanoke Cement Co.) speaking on cement, Hank Keiper (The SEFA Group) on supplementary cementitious materials, Will Rafferty (Swope & Co.) on admixtures, Dave Van Whye (Lynchburg Ready Mix) as the concrete producer, Gary Pasquarell (F&R) on testing, Jessica McClellan (ECS Lt.) on special inspections, and Gary Loomis was the structural engineer. This was the second time the panel had given the presentations and they were very comfortable knowing the information the audience expected and the questions that would be asked. As usual, questions on mix designs for specific purposes, the proper uses of added air, and proper curing prevailed.

The SW Council is pleased with this format and is actively looking for another opportunity to offer this seminar. 🚚

Fuel Rebates for Mixer Trucks

Recently we have been asked about the motor fuel tax rebate for mixer trucks. The following reviews legislation passed in 1985 which was the result of the Virginia Ready-Mixed Concrete Association working with producer members Clarion Render, Duane Bickers and others.

It was found that approximately 35% of the fuel consumed by a mixer truck is used to turn the drum- both on and off the road.

This exemption remains under 58.1-2259 B.1 and 58.1-2261 of The Virginia Code. Requests for refunds are made to Department of Motor Vehicles on form TS216 which is available on the Department of Motor Vehicles website (www.dmvnow.com) under the heading of forms and publications.

The Code Sections Follow:

§ 58.1-2259

B.1. Any person purchasing fuel for consumption in a solid waste compacting or ready-mix concrete highway vehicle, or a bulk feed delivery truck, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 35 percent of the tax paid on such fuel. For purposes of this section, a "bulk feed delivery truck" means bulk animal feed delivery trucks utilizing power take-off (PTO) driven auger or air feed discharge systems for off-road deliveries of animal feed.


§ 58.1-2261. Refund procedure; investigations.

A. Any person entitled to a refund pursuant to § 58.1-2259 shall file with the Commissioner an application on a form prepared and furnished by the Commissioner. Such application shall contain the information and certifications required by the Commissioner. The applicant shall set forth the basis for the claimed refund, the total amount of such fuel purchased and used by such applicant, and how such fuel was used. The applicant shall retain the paid ticket, invoice, or other document from the seller documenting the purchase of the fuel on which a refund is claimed for a period of time to be determined by the Commissioner. The Commissioner, upon the presentation of such application shall refund to the claimant the proper amount of the tax paid as provided in this chapter, subject to the provisions of subsection D. A ticket issued to the holder of a credit card as evidence of the delivery to such holder of tax-paid fuel shall, for the purpose of this section, be a paid ticket or invoice. Tickets or invoices marked "duplicate" shall not be acceptable.

B. The application for a refund shall be filed within one year from the date of the sale as shown on the paid ticket or invoice. For those that pay the motor fuels tax in accordance with § 58.1-2200, if the refund amount certified by the Commissioner is different from the


amount requested by the applicant, the Commissioner shall provide an explanation to the applicant of why the refund amount differs from the amount requested.

C. In the event an assessment is rendered for failure to report and pay the tax imposed as provided in § 58.1-2217 or § 58.1-2249 and such fuel is subject to refund under the provisions of § 58.1-2259, the application for a refund shall be filed with the Commissioner by the person entitled to such refund within one year from the date such assessment is paid and shall be accompanied by invoices covering the sale of the fuel and billing of tax to such person.

D. The Department may make any investigation it considers necessary before refunding the fuels tax to a person, and may investigate a refund after the refund has been issued and within the time frame for adjusting tax under this chapter. As a part of such investigation, the Department may require that the person provide the paid ticket, invoice, or other document from the seller documenting the purchase of the fuel on which a refund is claimed. Failure to provide a ticket, invoice, or other document evidencing the purchase of such fuel on which a refund is requested or was previously granted will result in the denial or reversal of that refund." 

Roanoke Cement Recognized as Leader in Environmental Improvement

Titan America/Roanoke Cement was honored with the Outreach Award at the Eleventh Annual Cement Industry Environment and Energy Awards, presented by the Portland Cement Association (PCA) and Cement Americas magazine at PCA's Spring Meeting in Chicago, April 16, 2012.

According to the PCA website, Roanoke was recognized for the following: "The environmental strides that Roanoke Cement Company (RCC) achieves are largely community-driven. In 2011 the company's efforts showcased the plant's commitment to several local initiatives including visits from local Cub Scouts and high school physics students. For the sixth consecutive year, plant employees participated in creek clean-up activities. Roanoke Cement reached out to neighbors through letters, brochures and meetings to brief them regarding its proposed quarry expansion and on-site mitigation proposal. Scores of residents signed letters in support of the plant's plan, which would improve the Catawba Creek habitat and environment through the planting of open canopy riparian buffers and additional efforts designed to reverse increasing sediment loads and reduce cattle intrusion into the creek." 


Environmentalists' Lawsuit Seeks to Resurrect EPA-Tabled Coal Ash Rule

On behalf of 11 environmental and community groups, Sierra Club counsel Earthjustice has filed suit in U.S. District Court for the District of Columbia to force completion of an Environmental Protection Agency rulemaking on power plant coal ash handling and disposal.

Plaintiffs contend the Resource Conservation and Recovery Act (RCRA) requires EPA to update safeguards to waste-rooted public health threats. They attach urgency to a rulemaking based on purported agency data indicating 29 newly identified instances of groundwater contamination from coal ash storage. Stiff opposition from construction and engineering interests concerned with a proposed rule's effect on the marketability of concrete-grade fly ash has helped prolong review of "Identification and Listing of Special Wastes: Disposal of Coal Combustion Residuals (CCR) from Electric Utilities," a notice of proposed rulemaking EPA issued in June 2010. A six-month public comment period on the notice drew more than 450,000 responses from individuals and industry or government groups.

The document offers two paths to tighten handling and disposal of landfill-bound CCR. The first would see the agency designate such material as

hazardous waste under RCRA Subtitle C; Earthjustice and Sierra Club have championed the option, while insinuating the hazardous waste designation would have no bearing on the viability of fly ash in concrete or other applications where it is routinely recycled. A second option in "Identification and Listing" would have the EPA defer much regulation and oversight of landfill-bound CCR to state agencies via a RCRA Subtitle D designation. The American Coal Ash Association and other proponents of fly ash recycling have endorsed aspects of the second option, especially in light of its absence of hazardous waste designation and stigma.


The Earthjustice lawsuit would force the EPA to set deadlines for review and revision of relevant solid and hazardous waste safeguards to address coal ash and "long-overdue" changes to the test that determines whether a waste is hazardous under RCRA. As the District Court reviews the merits of the suit and plaintiffs' standing, separate versions of a bill, The Coal Residuals Reuse and Management Act, preempting EPA designation of a CCR as a hazardous waste remain before the U.S. House and Senate. 

Article courtesy of concreteproducts.com

TCC 2012 Fly-In to Take Place in May

NRMCA encourages you to join our industry allies on Capitol Hill on May 30-31 for the Transportation Construction Coalition's (TCC) 2012 Legislative Fly-in and make the case to "Make Transportation Job #1". Despite the clear interest from bipartisan leaders in the House and Senate, long-term transportation reauthorization legislation remains elusive in the 112th Congress.

Come to Washington, DC, and tell your elected officials there is no one piece of legislation now before Congress that could do more to immediately create jobs and boost U.S. competitiveness than the transportation bill. Reduced federal investment undermines state and local transportation programs and hurts the construction industry: contractors, material suppliers, designers, equipment manufacturers and labor.

This year's meeting will be held at the Marriott Metro Center. To make your reservation call reservations at 1-800-228-9290. The room rate is \$274 per night and the registration cut-off date is Monday, April 30. Visit <https://www.blueskyz.com/v3/Login.aspx?ClientID=6&EventID=52> to register. 

On the Horizon Calendar of Upcoming Events

MAY 7, 2012

BRCAC Streets & Local Roads

10 AM - 11 AM
Harrisonburg, VA

MAY 8, 2012

HRCAC Business Meeting

11:30 AM
Surf Rider Restaurant
Virginia Beach, VA

MAY 9, 2012

BRCAC Business Meeting

12 NOON - 1:30 PM
Rowe's Family Restaurant
Staunton, VA

MAY 10, 2012

NVCAC Business Meeting

7:30 AM - 9:00 AM
Manassas, VA

MAY 15, 2012

CVCAC Business Meeting

11:30 AM
Meadowbrook Country Club
Richmond, VA

MAY 16, 2012

SWCAC Business Meeting

8 AM - 9:30 AM
Roanoker Restaurant
Roanoke, VA

MAY 20-22, 2012

VRMCA Spring Convention

The Greenbrier Resort
White Sulphur Springs, WV
*PRE-REGISTRATION REQUIRED

MAY 22, 2012

NVCAC Engineer/ Developers Meeting

*Presentation & Discussions on
Stormwater Management Solutions*
8:00 AM - 2:30 PM
Fredericksburg, VA

Please visit the online calendar
for an up-to-date list of events.

www.VRMCA.com/calendar

Social Media Assurances Remain Elusive for Employers

By John G. Kruchko and
Kevin B. McCoy

Do you think Mark Zuckerberg envisioned the chaos Facebook would cause for the workplace? I mean, could he have envisioned that billions of people around the world would routinely stop performing their assigned duties and check to see what their friend or family member in Albuquerque was doing at that moment? Surely not ... but who really knows? Regardless, the effect of Facebook and other social media sites (such as Twitter, LinkedIn, YouTube, Pandora, etc.) has been profound -- spawning not only an entirely new way for people to communicate, but also a whole new subset of law within the labor and employment realm. Can employers discipline employees who use social media during working time? Can employers lawfully restrict or monitor their employees' use of social media outside of work? Or can employers demand that job applicants disclose social media passwords and activity as a condition of employment? All these questions (and more) remain to be ultimately resolved one way or the other. The problem for employers is that individual states, courts, and government agencies are taking their own individual stands with respect to these issues: all of which leaves employers wondering who to listen to and how to lawfully proceed in this evolving area of the law. While there are still no hard and fast rules, it helps to look at some of the most recent events that have transpired in this area.

Debate Surrounding the Lawfulness of Social Media Policies Continues

Over the past couple of years, the National Labor Relations Board ("NLRB") has inserted itself into the mix of decision makers when it comes to social media issues. In particular, the NLRB has taken significant umbrage with employers who craft social media handbook policies that try to limit or force disclosure of information



“A total across-the-board elimination of access to social media websites while at work (based on the company’s need to maintain adequate bandwidth for business purposes) is an interesting way to try to prevent employees from using social media.”

employees generate and use via social media websites. However, the news has not been all bad for employers; some NLRB decisions have upheld the lawfulness of such policies. Yet, those decisions are pretty narrowly tailored, and the NLRB continues to issue decisions finding such policies unlawful. At the heart of the issue is whether a social media policy that restricts or monitors employee usage restricts employees' right to engage in "protected, concerted activity" under Section 7 of the National Labor Relations Act ("Act").

In March of this year, an Administrative Law Judge for the NLRB evaluated the social media policy of GS Secure Solutions (USA), Inc. In particular, the judge considered whether two provisions were lawful: (1) a prohibition on employees commenting on "work-related legal matters" without the permission of the company's legal department; and (2) a prohibition on employees

posting pictures or videos of fellow employees in uniform or while the employees were on the job.

With regard to the first provision, the ALJ found it be interpreted to prevent employees from discussing issues related to their work (such as job dissatisfaction), which is a protected activity under the Act. The ALJ therefore ruled that provision unlawful.

As for the second provision, the ALJ upheld it as permissible. The judge noted that the employer clearly has a legitimate interest in not having pictures of their employees in uniform and at work posted on social media websites, such as Facebook. The ALJ's position is particularly interesting on this point because the NLRB General Counsel memorandum published not too long ago clearly suggested that such categorical posting restrictions were likely unlawful.

The long and short of it is this – social media policies are now an indispensable part of every company's

employee handbook; but you should make sure to have your labor counsel craft or review the policy prior to implementing it. Otherwise, you may unwittingly find your company hauled before the NLRB to answer some very difficult questions about whether your policy violates your employees' federal labor rights.

Can You Ask for an Applicant's Facebook Login Information?

... and then there was the information. Aside from the lawfulness of restricting its use, social media has presented both employers and employees with an avalanche of information.... most of it fairly personal. As a result, social media provides easy access to a relatively sophisticated "background check" for job applicants. Employers can learn much about applicants' beliefs, biases, attitudes, and work history all by checking their Facebook account. Some employers have therefore simply started demanding that job applicants provide their login information as a pre-condition of employment.

Civil liberty organizations have decried the practice as offensive and detrimental to applicants' intrinsic privacy rights embedded in the U.S. Constitution. In fact, in response (in part) to a lawsuit filed in Maryland by the American Civil Liberties Union, the Maryland legislature recently became the first state in the country to pass a bill that specifically bans employers from asking applicants and employees to divulge their social media login information. The bill explicitly prevents employers from not only requiring the disclosure of such information, but also prevents an employer from threatening or taking any retaliatory action against an employee or applicant who refuses to provide such information. In fact, the

bill's reach actually extends beyond the realm of social media and prevents employers from asking or requiring the disclosure of user names and passwords for "any personal account or service" you access through "computers, telephones, personal digital assistants, and other similar devices." This would seem to extend to any type of purely personal accounts that are accessed primarily electronically by the user (such as bank accounts and personal e-mail accounts). Maryland Governor O'Malley is widely expected to sign the bill into law sometime in May 2012.

How other jurisdictions may choose to resolve this issue remains to be seen. But for now, if you are a Maryland employer, it is quite likely that you will soon no longer be able to inquire into your employees or applicants login information relating to their use of purely personal websites. If your company does business in another state, keep abreast of the court decisions and the legislative process with regard to this issue, because other states are sure to follow Maryland's lead in one form or another.


One Creative Solution to Employees' Use of Social Media

Since the Internet age began, employers have encountered difficulty in trying to "rein in" their employees' internet usage at work. More problematic is that more companies are increasingly relying on internet access as a way to conduct or enhance their business. So telling employees not to access the internet is no longer realistic for most employers.

However, accessing the internet requires an internet connection (which the company pays for) and a company's internet bills along with the speed with which it may be able to complete business related online tasks

can be dependent on the bandwidth they are using. So, for example, if your employees are spending too much time downloading or uploading pictures or watching movies or YouTube videos that can significantly reduce the available bandwidth available for legitimate, business related tasks the company needs to complete.

Proctor and Gamble ("P&G") recently took a step at maintaining a good supply of available bandwidth by completely banning its roughly 130,000 employees' use of the music streaming site Pandora and the movie/video site Netflix. According to its internal estimates, company employees were watching around 50,000 five minute YouTube videos and listening to 4,000 hour of music on Pandora every day! Interestingly, the company chose not to restrict YouTube use at this point because it uses the internet site to help sell many of its products. The company has indicated that other social media sites are not currently being blocked, but that other internet use restrictions may follow.

A total across-the-board elimination of access to social media websites while at work (based on the company's need to maintain adequate bandwidth for business purposes) is an interesting way to try to prevent employees from using social media. Of course, this solution only applies to employees while at work. There is nothing to prevent them from accessing social media sites at home (using their own bandwidth). To our knowledge, no court has weighed in on this practice. But before jumping on board with P&G's solution, you would be well advised to consult the laws in your jurisdiction and your employment counsel to ensure there would be no legal impediment to such a blanket work restriction. 

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