

# Weekly Wright Report (3/19/18)

## Think Using LinkedIn to Communicate with Customers of Your Former Employer is OK? Think Again.

By [Laura L. Rubenstein](#)

Using social media sites, like LinkedIn, can be a critical tool to stay in front of customers and clients. A recent case in Minnesota reminds us that certain posts after employment may violate your employment agreement.

At the start of her employment at Mobile Mini, Liz Vevea signed an agreement stating she would not directly or indirectly solicit any Mobile Mini customers for twelve months after she left. After resigning, she went to work for a competitor and made two posts on her LinkedIn account six months later which read:

I'm excited to have joined the Citi-Cargo Sales Team! We lease and sell clean, safe, and solid storage containers and offices. We are locally owned and operated, with local live voice answers. We offer same day delivery to the Metro and have consistent rental rates with true monthly billing. Give me a call today for a quote.

Call me today for a storage container quote from the cleanest, newest, safest and best container fleet in the State of Minnesota. Let's connect!

Mobile Mini sued Vevea and her new employer, arguing that these two LinkedIn posts violated the non-solicitation clause of her agreement. Vevea

argued that the posts were merely status updates but the court sided with Mobile Mini and granted a preliminary injunction after determining that Vevea likely breached the non-solicitation clause since the posts could constitute "blatant sales pitches" made before the expiration of the non-solicitation provision. The court further found that she intended to entice members of her LinkedIn network to contact her for cargo containers.

Vevea was ordered to remove the two LinkedIn posts and further instructed not to create any similar posts advertising Citi-Cargo's products.

This case should be a reminder to employers that social media is a powerful tool. Companies should keep close tabs on their current and former employees to ensure appropriately professional communications are always being conveyed. Be warned that solicitous statements on LinkedIn could end up soliciting a lawsuit.

## Happy 50<sup>th</sup> ADEA!

By [Don Walsh](#)

December 2017 marked the 50th anniversary of the Age Discrimination in Employment Act of 1967 (ADEA) which protects certain applicants and employees 40 years of age and older from discrimination on the basis of age in hiring, promotion, discharge, compensation, or terms, conditions or privileges of employment. Highlighting the protections provided to workers over the age of 40, the EEOC just reached a settlement with a Michigan based oral surgery practice which allegedly violated the federal law

by firing an employee four days after her 65th birthday. According to the EEOC's lawsuit, the employee had worked for the company for 37 years and was terminated in January, 2016 pursuant to a company policy which required employees to retire at age 65. The practice will pay \$47,000 to settle an age discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC).

There are few exceptions where companies, organizations or public policy can dictate mandatory retirement, for example where the position requires certain physical tasks be performed, such as for firefighters. In other cases involving executive or high-level policymakers, retirement can be mandated as long as the employee is provided with annual retirements of at least \$44,000 per year, until death. This retirement benefit must be "nonforfeitable," meaning that the plan may not provide circumstances under which the benefits would be reduced to less than \$44,000.

Clearly, the oral surgery practice was not apprised of this exemption and tried to skirt the law. This case should serve as a reminder to all private employers of the dangers of mandatory retirements or other employment actions imposed on older workers. If employment action is to be taken against a worker over the age of 40 or if severance is to be paid to the employee, the ADEA has very specific protections for employers to use to ensure that all workers who may have claims based on age-based employment decisions are adequately protected and/or released.

## Tips for Communicating with a Grieving Employee

By [Laura L. Rubenstein](#)

Often we are left without words when an employee returns to work following the death of a close family member. But silence or ignoring the situation can make a grieving co-worker feel even worse. Here are a few suggestions according to Adam Grant and Sheryl Sandberg, co-authors of *Option B: Facing Adversity, Building Resilience and Finding Joy*:

Show Empathy: Make statements such as, "I'm glad you are back, and we're here for you."

Acknowledge that Grief is On-Going: Ask, "How are you today?" which is better than "How are you?" The former allows people to answer honestly beyond the standard response of, "I'm fine."

Make a Specific Offer: "Are you free for lunch tomorrow?" or "Did you want to grab a cup of coffee from the kitchen together?" or "Here's my cell number, feel free to call me anytime you want to talk."

Take Cues from the Griever: "I'd love to hear more about your wife/husband/mother/father/son/daughter/etc. whenever that might be convenient for you. I want to respect your privacy."