# Bloomberg Law - Musk-Funded Suits Over Workers' X Use Will Struggle for Success

In a world where social media usage intertwines with work environments, the issue of private-sector workers and online conduct becomes increasingly relevant. Robert Hudock, Founding Attorney at Hudock Employment Law Group, shared his perspective with Bloomberg Law regarding Elon Musk's recent pledge to fund lawsuits for workers terminated due to posts on his social network, X.

Read the full article here: https://lnkd.in/g8y3FKqF

(https://news.bloomberglaw.com/litigation/musk-funded-suits-over-workers-x-use-will-struggle-for-success?context=search&index=0) and below is text of Khorri Atkinson's story, "Musk-Funded Suits Over Workers' X Use Will Struggle for Success", that was published today, August 16th in *Bloomberg Law.* You are quoted (in bold) and the name of the fimr is mentioned as well.

Litigation

Elon Musk has vowed to foot the legal bills of X users who are fired or disciplined over their activity on the social media platform. Photographer: Chesnot/Getty Images

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## Musk-Funded Suits Over Workers' X Use Will Struggle for Success

Deep Dive

Khorri Atkinson

Senior Labor & Employment Reporter

- Private-sector workers can be fired easily with few exceptions
- Employers advised to apply social media policy evenly

Elon Musk recently offered to fund lawsuits filed by workers fired over their activity on his social network X, formerly known as Twitter, but attorneys say those cases will be difficult to win.

Many private-sector workers are employed “at-will,” meaning they can be let go at any time with or without notice or cause. Litigation challenging a termination will generally be thrown out unless the discharge violates a worker’s contract or goes against public policies, including laws prohibiting discrimination.

At-will employees often face a rocky path to obtain damages in federal court after being fired for online posts their employers deem offensive or in violation of a workplace policy, employment attorneys told Bloomberg Law.

And unlike for public-sector workers, the First Amendment doesn’t apply. That constitutional protection allows employees to express their thoughts online without government interference, but it doesn’t shield against discipline by a private employer.

That means Musk’s pledge earlier this month to fund lawsuits by X users who believe they were “unfairly treated” by their “employer due to posting or liking something on this platform” isn’t going to help those workers, said FisherBroyles LLP partner Amy Epstein Gluck.

“I don’t think this is going to be successful,” she said.

“Most private employees would be out of luck if they posted something on social media that their employers don’t like,” Gluck said. “They can be terminated.”

## ‘PR Stunt’

Musk, who himself berated former Twitter employees online who complained about workplace issues at his company, posted that there are “no limits” to his offer to foot the bill for X-related bias suits.

X Corp. will “go after the boards of directors of the companies too,” he said.

The post came hours after NASCAR and Legacy Motor Club suspended driver Noah Gragson for liking a meme on Instagram making light of George Floyd, whose 2020 death in Minneapolis police custody sparked global protests.

Whether Musk will follow through remains to be seen. But in response to his post, several users shared their own personal experiences, including former ESPN analyst Kelly Stewart, who was fired in 2021 after her since-deleted homophobic posts from 2012 resurfaced.

Robert Hudock**, a principal at Hudock Employment Law Group, expressed skepticism about what legal costs Musk would cover. Plaintiff-side attorneys largely rely on contingency fees in workplace bias cases, and Musk didn’t clarify the circumstances under which he would fund the litigation.**

**“There are questions that need to be answered,” Hudock said.**

John Shahdanian, chair of Trenk Isabel Siddiqi & Shahdanian PC’s labor and employment group, said it seemed like “a PR stunt.”

X Corp. responded to a request for comment with an automated email featuring a “poop” emoji.

## Limited Exceptions

There are a few exceptions to the broad, at-will employment doctrine that allow a worker to come out victorious in this type of lawsuit, Shahdanian said.

California, New York, and several other states have off-duty conduct laws protecting private workers’ political speech online, but the scope of those protections vary.

The National Labor Relations Act also makes it unlawful for employers to interfere with a worker’s right to self-organize or engage in “concerted activity” to improve their wages, hours and/or conditions of employment, even if they’re not covered by a union. The law protects an employee who uses social media to voice workplace-related concerns.

Religious liberty violations can also be viable grounds for a worker to sue under Title VII of the 1964 Civil Rights Act. That’s the case even if a worker’s social media posts run afoul of workplace policy or viewed as discriminatory.

One notable example is a July 2022 Texas federal jury verdict in favor of a Christian former Southwest Airlines Co. flight attendant who was fired because of her anti-abortion social media posts.

Southwest and the Transport Workers Union of America Local 556 were both ordered to pay a total of $5.1 million in damages for engaging in discrimination and retaliation.

## Social Media Policies

But an employee's online speech disparaging others on the basis of their race, religion, sex, or national origin may also violate their coworker's Title VII rights, attorneys said.

That could prompt an employer to take an adverse employment action against the poster to avoid claims that it's harboring a hostile work environment, Shahdanian said.

Lawyers said employers should establish a detailed social media policy that ensures workers maintain behavior that's acceptable and aligns with the company's mission and values.

The policy should explicitly remind workers that any violation can lead to disciplinary action, including termination of employment, Gluck said.

The policy also must be enforced "evenly and consistently" across the board, she said.

Otherwise, employers risk exposing themselves to discrimination claims by workers in a protected class, who may allege that they were deliberately treated differently when it came to their social media activity, Gluck said.

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