

Information Paper

DAJA-ALD
7 February 2024

SUBJECT: Social Media and Appropriate conduct for Speech by Soldiers and Army Civilians

1. **Purpose.** To summarize the relevant guidance and authority concerning personal use of social media by Soldiers and Army Civilians.
2. **References.**
 - a. 5 U.S.C. § 7513.
 - b. 18 U.S.C. §§ 1381, 2385, 2387, and 2388.
 - c. Hatch Act (5 U.S.C. §§ 7321–7326).
 - d. The Uniform Code of Military Justice (UCMJ), Title 10, Subtitle A, Part II, Chapter 47, United States Code.
 - e. Department of Defense (DOD) Directive (DODD) 1344.10, Political Activities by Members of the Armed Forces, 19 February 2008.
 - f. DOD Instruction (DODI) 5400.17, Official Use of Social Media for Public Affairs Purposes, 12 August 2022.
 - g. DODI 8170.01, Online Information Management and Electronic Messaging, 24 August 2021.
 - h. DODI 1325.06, Handling Protest, Extremist, and Criminal Gang Activities Among Members of the Armed Forces, 20 December 2021.
 - i. DOD Office of General Counsel Standards of Conduct Office (SOCO) Advisory Number 23-03, Application of Standards of Conduct to Personal Social Media Accounts, 5 May 2023.
 - j. AR 600-20, Army Command Policy, 24 July 2020.
 - k. AR 670-1, Wear and Appearance of Army Uniforms and Insignia, 26 January 2021.
3. **Overview.** The longstanding policy of DOD supporting personnel's right of expression extends to personal statements. Specifically, personal statements of

opinion, belief, or perspective, not intended to denigrate, degrade, disrespect, or harm, are generally permissible and are not normally a valid basis for punitive or adverse administrative action. Statements include social media posts and may extend to posts complaining about military work environments or living conditions. In some cases, social media posts may cross the line from mere expressions of opinion or personal belief into speech violating law or policy. Examples of such violations include a social media post that is insubordinate or disrespectful when directed at certain officials; violates a lawful order; involves hazing or bullying; constitutes engagement in extremist activities; or engages in prohibited political activity. Whether it is appropriate for an agency or command to pursue adverse administrative action or UCMJ action in response to a particular social media post is fact-dependent; therefore, it is important to closely examine the context and intent of the post before taking action.

4. Potentially Problematic Social Media Activities (Personal Use). Personal use of social media within the military has become increasingly pervasive in recent years. Soldiers and Army civilians frequently use personal social media accounts to express personal views on events, document aspects of their lives, or share content with friends and family. DODI 8170.01 provides that “DoD personnel who are acting in a private capacity have the First Amendment right to further release or share publicly-released unclassified information through non-DoD forums or social media provided that no laws or regulations are violated.” This Instruction further states that “DoD personnel will not post comments or material that denigrates another military or civilian member of the DoD team.”

While most personal social media posts are of little significance to DOD activities, there are occasions where such posts may conflict with or detract from official Army efforts and operations. Two areas that may create overarching concerns with personal social media accounts are: 1) instances where the account implies official endorsement or may create the perception of official Army communication, and 2) instances where the underlying content of the post or message violates applicable law or policy.¹

a. Appearance of Endorsement or Perceived Official Communication.

(1) Soldiers and Army Civilians must avoid the implication that the DOD or Army sanctions the content on their personal social media accounts. DODI 5400.17, para.

¹ It is important to distinguish between official social media activity and personal use of social media. The DOD expects the Services to establish and maintain an appropriate external official presence (EOP) on social media platforms for public affairs purposes. Official Army social media accounts are a government resource used to amplify timely and relevant information about the national security, defense strategy, and appropriate unclassified work of the Army. Personal social media accounts must be clearly identifiable as personal. Personal social media accounts are not a venue for the Army EOP and should not be used to conduct official business or put out official information. Existing Army policies apply in the social media environment to both official and personal social media accounts. DODI 5400.17 is the latest DOD policy on social media which covers the core principles and guidance for DOD official social media use, mandatory records management, and personal social media use by DOD personnel.

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3.1.c. To avoid the issue of perceived or implied endorsements, personnel may not use their official titles, insignia, uniforms, or symbols in a way that could imply official sanction or endorsement. Implied endorsement may inadvertently occur when the social media platform itself includes personnel's employment and official title; as such, any use of that social media platform would necessarily include an implied endorsement. When in doubt, employees should use an appropriate disclaimer such as the one found in DODI 5400.17, Sec. 8, Figure 2.²

(2) For Soldiers, Army Regulation 670-1 also prohibits wearing Army uniforms in connection with the following activities (regardless of social media involvement): in furtherance of any political or commercial interests; when engaged in off duty civilian employment; when participating in public speeches, interviews, picket lines, marches, rallies, or public demonstrations (except as authorized); when attending any meeting or event that is a function of, or is sponsored by, an extremist organization; or when wearing the uniform would bring discredit upon the Army, as determined by the commander.

b. Posting or Sharing of Social Media Content in Violation of Applicable Law or Policy. Even when concerns over endorsement or the perception of official communication are not at issue, the underlying content of a social media message or post may still violate applicable law or policy. The following, non-exhaustive list of categories are examples of content that, depending on the context and circumstances, may rise to the level of such a violation even when posted or shared using a personal social media account:

(1) Partisan political speech or fundraising in violation the Hatch Act or DODD 1344.10.

(2) Hazing, bullying, and discriminatory harassment in violation of AR 600-20.

(3) Engagement in extremist activities as defined by DODI 1325.06 and implemented by AR 600-20.

(4) Unauthorized disclosure of classified or non-public information.

(5) Information that is prejudicial to good order and discipline or is service discrediting.

² "The views and opinions presented herein are those of the author and do not necessarily represent the views of DoD or its Components. Appearance of, or reference to, any commercial products or services does not constitute DoD endorsement of those products or services. The appearance of external hyperlinks does not constitute DoD endorsement of the linked websites, or the information, products or services therein."

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(6) Conduct which adversely affects the employee's or co-worker's job performance, the agency's trust and confidence in the employee, or the agency's mission."

(7) Posts in violation of the UCMJ including the following articles: Article 82, solicitation to commit an offense; Article 88, contempt toward officials; Article 89, disrespect toward superior commissioned officer; Article 91, insubordinate conduct toward a warrant officer, noncommissioned officer, or petty officer; Article 92, failure to obey order or regulation; Article 101, improper use of countersign; Article 103b, aiding the enemy; Article 117, provoking speeches or gestures; Article 133, conduct unbecoming an officer; and 10 U.S.C. 1034, protected communications, prohibition of retaliatory personnel actions.

(8) Posts in violation of Federal Law including the following sections of Title 18, United States Code: Section 1381, enticing desertion and harboring deserters; Section 2385, advocating overthrow of the Government; Section 2387, activities affecting the Armed Forces generally; Section 2388, activities affecting the Armed Forces during war.

5. Responses to instances of potential misuse of personal social media accounts.

Determining whether a violation of law or policy has occurred with respect to an individual's personal use of social media requires careful analysis of the context, nature of the post, and, in some cases, the intent of the individuals involved. It is important to always contact your servicing legal advisor prior to pursuing any punitive or adverse administrative action. Response to a founded violation may range from no action, counseling, or reprimand (at the lower end of the spectrum), all the way to involuntary separation or even court-martial.

6. Other Considerations: Army Civilians, Members of the Reserve Component, and Members of the National Guard.

a. Limitations placed on speech by Soldiers differ substantially from the limitations placed on Army Civilians. Army Civilians are usually not subject to the UCMJ (unless they are a military retiree or a member of the Reserve Component or National Guard). Accordingly, Army Civilians generally enjoy more freedoms with respect to speech, especially outside of the Federal workplace and in a personal capacity. However, Army Civilians may still be disciplined for off-duty conduct, including online activities, when there is a nexus between the offending conduct and the employee's job-related responsibilities such that the proposed discipline would promote the efficiency of the Service. See 5 U.S.C. § 7513(a). In terms of social media, a nexus may be established where the conduct adversely affects the employee's or co-workers' job performance, the agency's trust and confidence in the employee, or the agency's mission.

b. Similarly, members of the Reserve Components (Army Reserve and National Guard) when not in a Federal status, are not subject to UCMJ jurisdiction. However,

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Reserve Component personnel may be subject to adverse administrative action for misconduct that occurred outside of a Federal status; when the social media platform or post includes the official title, position, or role in the Army Reserve or National Guard, restrictions similar to that of active-duty personnel may apply. Additionally, state laws and regulations may apply to National Guard members when in a state status.

7. **Conclusion.** It is DOD policy that the right of expression be preserved to the maximum extent possible in accordance with the First Amendment of the Constitution and statutory provisions of Titles 10 and 18, United States Code. Commanders, supervisors, and leaders at all levels should balance the importance of free expression with the need to maintain unit efficiency, effectiveness, and morale.

Prepared By: OTJAG Administrative
Law Division