

Security trumps privacy in directory



DEAR CARRIE: I am an at-will professional employee. Several years ago, our employer asked employees for permission to use their pictures in company promotional materials, on the website, etc. It was voluntary, and I opted out. Recently, the company sent out another message regarding the use of pictures for a company directory. This time it was a directive. We must agree to have our photographs used, allegedly for security reasons. I would prefer that my photo not appear in this directory. At any rate, the company has a picture of me because I have a photo ID that I use to get into the building. Do I have any rights to the privacy of my image? I will comply if I have no alternative, as I like my job and don't want to lose it.

— *Unwanted Exposure*

DEAR UNWANTED: Your question is similar to a recent one from a woman who complained that her former company continued to use her résumé in materials for project bids, well after she had left. Because the company used her personal information without her permission, the unau-

thorized use is considered a violation of her right to privacy and her right to publicity. In other words, the company had no right to use her résumé for commercial purposes without her consent, said employment attorney Alan Sklover of Sklover & Co. in Manhattan.

He notes that while your situation shares some similarities with the previous reader as far as the commercial use of your personal information or image is concerned, your status as a current employee entails something different when it comes to noncommercial uses.

Sklover, who represents employees, noted that even though you are an employee, you were asked for permission to use your photo for promotional purposes.

"Promotional materials, such as brochures, websites and videos, are the very essence of commercial use," Sklover said. "They are going to be used to promote, that is, to attract more customers or clients. Because they were being used for commercial purposes, voluntary consent was requested, not required, meaning: 'We won't fire you if you say 'No.' " he said.

The use of your photo for the company directory, however, is a different matter.

"This time, the employer



A company may require your photo to be used for in-house security and safety reasons — and even fire you if you refuse to allow this.

has requested to use the employee's photograph for its own internal use, that is, for the purposes of improved internal security, which is not commercial in nature," he

said. "Every employer has a duty to provide all of the security it can for its employees, and every employee has a right to good security at work. An employer providing good

security and a safe workplace is not a commercial use but a noncommercial use, and one that we all appreciate."

The upshot is this:

"As a noncommercial use, the employer can require your photo, for your own safety and the safety of others," Sklover said. "Indeed, they can even terminate an employee who does not cooperate on this basis, which would be considered insubordination with an entirely reasonable — and laudable — request like this one."

And he added, "Good, thoughtful and effective workplace safety and security is in everyone's interests. Viewed in this context, and in her own interests, I bet the reader will be much more willing to provide her photo."

Call Carrie Mason-Draffen with workplace questions at 631-843-2791, or email her at carrie.mason-draffen@newsday.com. Your name and number won't be published. Not all questions can be answered; some may be edited for length and clarity.

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Court spars over union fees, Gorsuch silent

The Associated Press

A divided Supreme Court sparred Monday over a case that could undermine the financial footing of labor unions that represent government workers.

Justice Neil Gorsuch, who holds the decisive vote, asked no questions during the hour-long session as his colleagues made colorful, sometimes angry comments.

The justices heard arguments in a challenge to an Illinois law that allows unions representing government employees to collect fees from workers who choose not to join.

The court split 4-4 the last time it considered the issue in 2016 following the death of Justice Antonin Scalia. Gorsuch joined the court in April and has yet to weigh in on union fees.



Illinois government worker Mark Janus, right, at the Supreme Court in Washington Monday, is fighting union fair-share fees.

Organized labor is a big supporter of Democratic candidates and interests. Unions strongly opposed Gorsuch's nomination by President Don-

ald Trump.

The unions say the outcome could affect more than 5 million government workers in 24 states and the District of Columbia.

In many respects, Monday's arguments were a replay of what happened in 2016, when the court took up so-called fair share fees and appeared to be ready to overrule a 1997 high court decision that serves as their legal foundation. But Justice Scalia's death just over two years ago left the court tied, leaving a lower-court ruling in favor of the fees in place.

"You're basically arguing, do away with unions," Justice Sonia Sotomayor told William Messenger, a lawyer with the National Right to Work Legal Foundation. The group is representing Illinois worker Mark Janus in his Supreme Court challenge.

On the other side, Justice Anthony Kennedy, who has voted against unions in past

related cases, scoffed at labor's argument that there is a difference between collective bargaining over government employees' pay and benefits, and unions' political activities, which nonmembers do not have to support.

If the unions lose, won't they have less political influence, Kennedy asked David Frederick, representing the American Federation of State, County and Municipal Employees Illinois affiliate. Yes, Frederick said.

"Isn't that the end of this case?" Kennedy replied.

Janus says he has a constitutional right not to contribute anything to a union with which he disagrees.

A decision in *Janus v. AF-SCME Council 31*, is expected by late June.