

Social Media in the Workplace

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What Is Social Media?

- **Social Networking:**
 - Sites where individuals create public or semi-public profiles, generate lists of other users with whom they share a connection, and create and view content provided by the users.
 - Such as: Facebook, MySpace, LinkedIn.
- **Blogs:**
 - Sites where an individual keeps a journal or diary on a topic of the author's choice, and which usually allows readers to leave comments as well.
 - Such as: Julie/Julia, Twitter ("microblog")
- **Virtual Worlds and Role Playing Sites:**
 - Allows users to join communities and live virtually through avatars.
 - Such as: Second Life, various gaming sites.
- **Photo and Video Sharing Sites:**
 - Sites where users upload video and share with others.
 - Such as: Flickr, Picassa, YouTube, Vimeo
- Many of these sites can be linked to each other through a common user account.

Social Networking Sites: How Many Are There?

- MySpace
- Twitter
- Friendster
- Facebook
- Adult FriendFinder
- Classmates.com
- LinkedIn
- Match.com
- EHarmony
- Bebo
- Badoo
- Geni.com

Wikipedia lists over 140 major active social networking websites!



friendster



eHarmony®

twitter



badoo

match.com

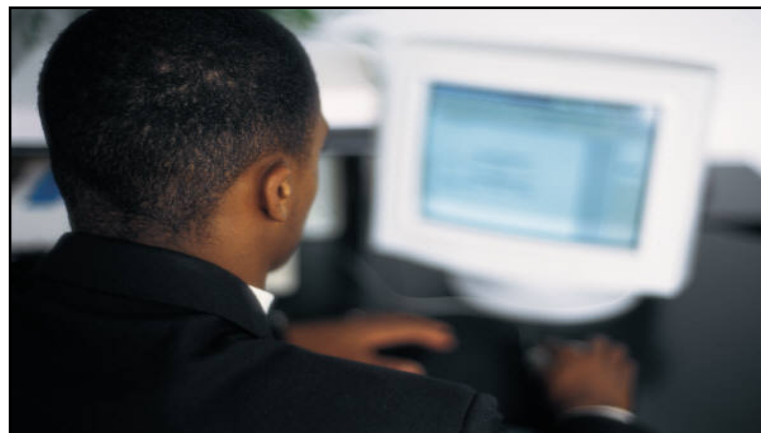


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Who Is Using Social Media?

- EMPLOYEES!
- More than 50% of executives under the age of 40 are actively engaged in social media
- 91% of decision-makers are taking part in social media; 69% do so for business purposes
- 55% have at least one social networking profile and 43% are active in creating social media content



Relevant Statistics: Technology In The Workplace

- Social Media is changing the work place:
 - 77 % of U.S. young adults (18-27) surveyed by Accenture in 2009 agreed with the statement, “Technology helps improve the quality of my work.”
 - 73% agreed that “Technology helps make it easier to communicate with my peers and supervisors.”
 - 30% agreed that “State-of-the-art equipment and technology will be vital in my employer selection.”
- Working adults in the U.S. spend 19.3 hours per week on social media sites, texting or instant messaging.

Relevant Statistics: Social Media Use

- 79% of adults surveyed agree with the statement, “I try to keep my business and personal networks separate.”
- 43% of adults surveyed agreed that “staying active on social networks takes up a hefty chunk of my private time.”
- 31% of adults surveyed agreed that “staying active on social networks takes up a hefty chunk of my business hours.”

- AIIM, Survey of Social Media Activists, <http://www.aiim.org>.

Deloitte LLP 2009 Ethics & Workplace Survey: “Social networking and reputational risk in the workplace.”

- National survey of 2,008 employed adults in the U.S.:
 - 74% of employees believe it is easy to damage a company’s reputation via social media
 - 53% said their social networking pages are none of their employers’ business
 - 40% of business executive respondents disagreed, and 30% admit to informally monitoring their employee’s social networking sites
 - 61% of employees say that even if employers are monitoring their social networking profiles or activities, they won’t change what they’re doing online
 - they are already aware that the sites are “public.”
 - 27% of employees surveyed don’t consider the ethical consequences of posting comments, photos, or videos online — and more than one-third don’t consider their boss, their colleagues, or their clients.

Employer Concerns Overview

- Productivity issues – “Cyberslacking”
 - Social media sites are designed to encourage repeat use during a day, creating major distractions.
- Information Gathering
 - It is tempting to “google” or cyberstalk a potential new hire, but is it proper?
 - Can you “follow” and monitor your current employee’s actions?
- Information Sharing and Disruption in the Workplace
 - Protecting confidential business information from being shared inappropriately.
 - Does a female employee perceive a Facebook friend request from a male coworker to be harassing?

Other Employer Concerns

Defamation Accelerated By Technology

- In Boston, the First Circuit Court of Appeals upheld a Staples manager's lawsuit in which he claimed he was humiliated after the company sent a mass e-mail to 1,500 employees, explaining that he had been fired for violating the company's travel and expense policy.
- A judge allowed a former Rite Aid employee's suit to proceed, where he sued the company and an online employee screening service for defamation. The employee alleged that he was wrongfully portrayed as a thief in an online database that tracks employees, causing him to be blacklisted in the retail industry.

Productivity Concerns

- **Blogging:**
 - Whether it is workplace or personal, concerns include the risk of disclosure of confidential information and negative publicity
 - However, monitoring non-workplace blogging might not be worth the effort; might make employees feel that the employer is violating their rights.
 - Furthermore, an employee terminated for non-workplace blogging could have a basis for a wrongful termination claim
- **Microblogging:**
 - Twitter, on the scene in 2006, allows its users to communicate at any time during the day – including during the work day. Twitter’s appeal is that posts are brief, typically 140-200 characters, and can be written or received using a variety of computing devices, including cell phones. Twitter posts answer the central question, “What are you doing?”

Productivity Concerns vs. Legitimate Business Use

- Generally, employees who are “tweeting” or blogging are not working!
- But... Yammer, available only since September 2008, is Twitter for businesses.
 - Described as a “discussion board” for companies, Yammer allows users to answer the question, “What are you working on?”
 - Unlike Twitter, which limits users to 140 characters, Yammer’s users can type as much as they like and reply to specific messages.
 - Yammer is a private social network and has user profiles and groups, so that individuals can have conversations that other employees cannot see.
- Many companies also use internal instant messaging systems as a way for employees to communicate with one another – employers think of it as a quicker, (even) less formal email alternative.
 - That can be dangerous!

How are employers responding?



- According to a study of companies with 1,000 or more employees, 17% report having negative issues with employees' use of social media.
- 8% of those companies report having actually dismissed someone for their behavior on sites like Facebook and LinkedIn.
- That's double from 2008, where just 4% reported terminating an employee based on social media.

Information Gathering for Current Employees

- Can you Monitor your employee's social media communications?
 - Certainly, if they are conducted during working hours and are sent through the employer's server.
 - But, in Quon v. Arch Wireless, the Ninth Circuit held that the federal Stored Communications Act prohibits an employer from receiving content of text messages sent by its employees through a third-party pager service, even though the employer paid for that service.
 - The Supreme Court will hear this case this year on appeal!
- Also, certain state constitutions and statutes provide privacy protections that may encompass electronic communications.
 - For example, Washington's state constitution reads: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Notably, this does not extend to the private sector.
 - On the other hand, California's state constitution may provide privacy protections in private-sector workplaces where the employee had a reasonable "expectation of privacy."

Information Gathering for Current Employees

- Generally, private-sector employees have little recourse if they are fired for what they write on blogs or social networking sites
- Caveat – be careful not to fire or discipline an employee for contents of their blog if the employee blogs about
 1. Membership in protected class
 2. Whistleblowing
 3. Certain union-related activities
 4. Lawful, off-duty activities (i.e., adult alcohol consumption)

National Labor Relations Act Implications

- Disciplining an employee for blogging about the company may run afoul of the NLRA if the employee is engaged in protected concerted activity under the statute.
- What does the NLRA protect?
 - Section 7 of the NLRA protects employees who engage in protected concerted speech or activity about their wages, benefits or other terms and conditions of employment

National Labor Relations Act Implications

- NLRA analysis – is employee protected by Act?
 - Most non-supervisory, non-management, private sector employees are covered – even if there is no union presence.
 - “Concerted” – action must be engaged in with or on authority of other employees and not solely by and on behalf of employee alone
- For example, before disciplining a blogging employee, determine if blogger is engaged in protected “concerted activity”
 - If employee is using his/her blog to complain about a supervisor, this may not be protected concerted activity if the blogger is doing so alone
 - However, if blogger is promoting blog to other workers or other workers are visiting the site, it may fall under protection of the NLRA because 2 or more employees are acting together in concerted activity
 - Keep in mind, even if no other employee is viewing complaints on blog, if employee can show that content is aimed at initiating, inducing, or preparing for group activity, it may be protected under NLRA
 - Analyze whether employee’s conduct causes substantial disruption to company’s workforce, leakage of confidential information, or otherwise brings company into disrepute

Whistleblowing and Legal Off-Duty Activity

- Whistleblowing:
 - For example, Sarbanes-Oxley Act prohibits employers from terminating employees for “provid[ing] information, caus[ing] information to be provided, or otherwise assist[ing] in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of ... any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.”
- Legal Off-Duty Activity:
 - 28 states and Washington D.C. have statutes that protect employees from adverse employment actions based on the employees’ off-duty activities.
 - For example, the California Labor Code mandates that no employee shall be “discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against” “for lawful conduct occurring during nonworking hours away from the employer’s premises.”

Fired for YouTube

- Facebook, MySpace profiles and personal blogs may get employees in hot water!
- A Burger King employee was fired after posting a YouTube video of him taking a bath in a work sink
- Burger King had to discard \$10,000 worth of equipment, completely sterilize the sink twice, and retrain employees in health and sanitation procedures
- Someone e-mailed the video to the health department but no citations were issued because Burger King had already taken corrective action



Fired For MySpace Postings

- Hospital employees fired for posting pictures of patients on MySpace
- Two workers at the University of New Mexico Hospital took shots of patients in treatment
- Photos were mainly close-ups of injuries in the hospital's ER, and did not include patients' faces or other identifying features
- Hospital managers oversaw the removal of the photos from the web site and employees' cell phones
 - Cell phones with cameras can be used to take pictures of documents, co-workers, plans, computer screens, etc. in the workplace.



Fired For Facebook Posting

- Virgin Atlantic Airways fired 13 members of a cabin crew after they allegedly posted “inappropriate” comments on Facebook
- The Company refused to give details of the comments but said the comments:
 - Belittled and insulted airline passengers, using offensive stereotypes to describe them;
 - Questioned the safety of the airline, joking about faulty engines; and
 - Questioned the cleanliness of the airline, including jokes about the airplanes being full of cockroaches.
- Company said crew members’ Facebook activity brought company into disrepute and contradicted the customer service image it portrays to its customers

Fired for Personal Blog Post

- Ever heard the phrase, “getting dooced”? Heather Armstrong was fired from her web design job in 2002 after her employer discovered her personal blog, Dooce.com, where she posted under her real name
- Armstrong’s postings sometimes included comments about her colleagues. For example:
 - “If you are the boss, however, you should be aware that when you order Prada online and then talk about it out loud that you are making it very hard for those around you to take you seriously.”
- Because of Heather, “getting dooced” is now a common phrase for being fired for blogging about work.

Fired for Facebook Posting

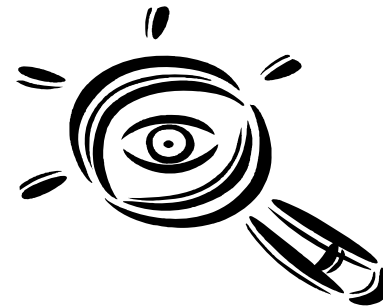
- Insurance worker in Zurich, Switzerland called her employer and told them she was too ill to come into work that day.
- Part of her duties involved using a computer, but she claimed her cure involved lying in the dark and that she was unable to face the lighted screen.
- Fellow worker discovered absent employee was chatting on Facebook during her sick day.
- Employee admitted she had been on Facebook but only while lying in bed and using her iPhone, an action she insisted was far different than looking at it on an illuminated computer screen.
- Insurance company fired her.
- Employee accused the company of spying on her and sending her a false “friend” request so they could see what she was up to but said she is not suing the company and doesn’t want to go back to work because her “trust for this employer is gone.”
- Company banned use of Facebook as a result of this incident.

Fired for Tweet

- Master's degree student at University of California, Berkeley wrote on Twitter:
 - “Cisco just offered me a job! Now I have to weigh the utility of a fatty paycheck against the daily commute to San Jose and hating the work.”
- Cisco employee Tim Levad saw the post and responded with his own Tweet:
 - “Who is the hiring manager? I’m sure they would love to know that you will hate the work. We here at Cisco are versed in the Web.”
 - That exchange exploded into what is now known as the “Cisco Fatty” incident – other Twitterers picked up the posts, and soon the internet was “all atwitter” about a prospective employee who squandered a job opportunity in this dire economy for saying something stupid online.

Information Gathering for Potential Employees

- Many employers have begun to use social networking sites for recruiting purposes.
- A recent CareerBuilder survey of U.S. and U.K. employers showed that 53% of employers are using social media sites to research candidates.



Why Employers Have Disregarded Candidates After Screening Online:

- In a 2010 CareerBuilder survey, 43% of employers reported they have found content on social networking sites that caused them not to hire the candidate. Top examples cited include:
 - Candidate posted provocative or inappropriate photographs or information
 - Candidate posted content about them drinking or using drugs
 - Candidate bad-mouthed their previous employer, co-workers or clients or shared confidential information from previous employer
 - Candidate showed poor communication skills
 - Candidate made discriminatory comments
 - Candidate lied about qualifications
- In a 2009 survey, 14% of employers reportedly have disregarded a candidate because the candidate sent a message using an emoticon, such as a smiley face, while 16% disregarded a candidate for using text language such as GR8 (great) in an e-mail or job application.

Why Employees Have Offered Jobs To Candidates After Online Screening:

- A 2010 CareerBuilder survey showed that at least 50% of employers reported they have found content on social networking sites that caused them to hire the candidate. The top examples include:
 - Profile provided a good feel for the candidate's personality and fit
 - Profile supported candidate's professional qualifications
 - Candidate was creative
 - Candidate showed solid communication skills
 - Candidate was well-rounded
 - Other people posted good references about the candidate
 - Candidate received awards and accolades

Should Employers Use Online Screening In Considering Applicants?

- Terms and conditions of Facebook limit use to personal, non-commercial use; use by organization is clearly commercial
- Discrimination claims arising from employer basing decision not to hire candidate on information gleaned from Facebook because sexual orientation, marital status, racial and religious views are all frankly revealed in social networking world
- Exercise caution when looking at these web sites because information you acquire could present problems down the road

Information Sharing and Disruption in the Workplace Through Social Media

- Confidential Information Leaks
 - Client Information
 - Mass Layoffs
 - Financial Information
- Company Embarrassment
- Potential liability for violation of federal securities laws (fraud):
 - Employee blogs or comments contain material misrepresentations about the company.
- Attorney-Client Privilege Waiver
- Discrimination Claims Between Employees, Vendors, etc.

How Are Employers Responding?

- Block access to all social media sites
 - 50% of employees are being blocked or heavily restricted from accessing Facebook by their employers. Companies reported to have blocked employees from visiting Facebook include LloydsTSB, Credit Suisse and Goldman Sachs.
- Allow access to certain sites
- Allow access to all sites
 - If you can't beat 'em, join 'em
 - Recognize the value and influence of the conversations that are happening online and become a valuable part of the conversation
- Encourage use of sites
 - IBM formally announced a policy encouraging its workers to engage in personal blogging, and to discuss IBM when they do
 - Sun Microsystems Inc. encourages blogging and provides its employees with company service space to maintain their blogs
- Create own sites and/or instant messaging devices
 - Employer-sponsored Blogs = “Blogosphere”
 - The more control an employer has over the content however, the more likely it is that it will be found liable for defamation, trademark infringement, etc.
- Whichever method an employer chooses, it is important to create and enforce social media and/or electronic communications policies.

Creating and Enforcing a Policy

- Most favored option is a “reasonable use” policy:
 - No detailed protocols:
 - An extension of, or reference to, Company’s existing reasonable use policy for internet or other electronic communications (i.e., email).
 - Can be tailored:
 - Example: Senior Managers not allowed to invite junior employees to be their “friends” but may accept such an invitation from junior employees.
 - Provide a complaint procedure:
 - Encourage employees to bring work-related complaints to Human Resources before announcing such on social media sites.
 - Give the name of a contact person within the Company who can answer questions about social media use by employees.
 - Train management and human resources professionals on the policy and enforcement.

“Reasonable Use” Policies

- **Key Points**

- Non-discriminatory/anti-harassment policies apply when employee is using social networking sites
- Reinforce obligation to keep company’s information confidential
- Define “reasonable” usage
- Make clear that employees cannot make it seem as if their views or comments are those of their employer, unless they have advance authority to do so
- State that employer may monitor employee’s use of sites
 - But, be careful to do so in a uniform and non-discriminatory manner.
 - Some state statutes, such as those in Delaware and Connecticut, require employers to give notice to employees who will be subject to electronic monitoring.
- Set out consequences for failure to comply – including termination
- Address post-employment references
 - Is it permissible for a supervisor or co-worker to “recommend” a former employee on a social networking site, such as LinkedIn?
 - A positive recommendation on a social networking site could conflict with the company’s position regarding the former employee’s performance, especially when made by a manager or supervisor.

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