

SOCIAL MEDIA POLICIES: WHAT THEY ARE AND WHY YOUR ORGANIZATION SHOULD HAVE ONE

Online social media sites, such as blogs, Facebook, Twitter, LinkedIn, and YouTube, are used by millions of people daily. The most popular social media site, Facebook, now boasts over 350 million registered users worldwide.¹ Twitter, a “microblogging” site where people post messages of 140 characters or less, has reported 7 million visitors a month.² And the demographics of social media users are changing quickly. Social media is no longer just for teens and college students: the fastest growing segment of Facebook users are people over age 55³ and the largest number of Twitter users are people between the ages of 35 and 49.⁴

Given social media’s explosive popularity, it should come as no surprise to employers that their employees are accessing and posting on these sites, both at home and at work. A 2009 survey by Deloitte found that 55% of all employees visit social networking sites at least once a week; 22% visit social networking sites five or more times per week.⁵ Fifteen percent of the survey’s respondents said that they regularly accessed social media sites for personal reasons from their work computers.⁶

Unfortunately, an employee’s inappropriate use of social media can create significant problems for the employer organization. For example, in 2009, the pizza chain Domino’s suffered a public relations nightmare when two of its employees filmed a prank in the restaurant’s kitchen and posted the video to YouTube. Within days, the video, which showed the employees committing numerous health code violations, had been viewed more than one million times and had reached the national news.⁷

An offensive or unlawful online posting may do far more than simply embarrass a nonprofit organization. It can erode public trust, damage funding prospects and, in certain circumstances, may even result in legal liability for the employer.⁸ The risks are such that American employers are increasingly disciplining and terminating employees over online activities. In a 2009 study,

¹ <http://www.facebook.com/press/info.php?statistics> (last visited January 19, 2010).

² http://blog.nielsen.com/nielsenwire/online_mobile/twitters-tweet-smell-of-success/ (last visited January 19, 2010).

³ <http://mashable.com/2009/07/07/facebook-users-older/> (last visited January 19, 2010).

⁴ *Supra* note 2.

⁵ “Social Networking and Reputational Risk in the Workplace”. Deloitte LLP 2009 Ethics & Workplace Survey Results, available at http://www2.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_2009_ethics_workplace_survey_220509.pdf

⁶ *Id.*

⁷ Stephanie Clifford, “A Video Prank at Domino’s Damages Its Brand,” *The New York Times*, April 15, 2009, available at

http://www.nytimes.com/2009/04/16/business/media/16dominos.html?_r=1&partner=rss&emc=rss

⁸ Because social media is a relatively new phenomenon, it’s not clear that an employer could be held legally liable for an employee’s online postings. But the few cases in this area suggest that liability may attach if the employer knew or should have known that its employee was engaging in unlawful activity online, and did not respond appropriately. See, e.g., *Blakey v. Continental Airlines, Inc.*, 164 N.J. 38, 751 A.2d 538 (2001). In this case, the New Jersey Supreme Court held that the defendant company had a duty to take action to stop online employee harassment of a co-worker, once the company knew or should have known harassment was taking place in a “work-related setting”. The case was remanded to determine whether an electronic bulletin board was sufficiently “work related” to create employer liability. The court wrote: “Employers do not have a duty to monitor private communications of their employees, [but] employers do have a duty to take effective measures to stop co-employee harassment when the employer knows or has reason to know that such harassment is part of a pattern of harassment that is taking place in the workplace and in settings that are related to the workplace.”

approximately one in nine responding employers reported having terminated an employee for conduct related to his/her use of a social media site.⁹

For these reasons, the Pro Bono Partnership recommends that employer organizations consider adopting a social media policy. A social media policy provides guidelines to your employees for appropriate use of social media sites. Although the law in this area continues to evolve, a social media policy is really just a complementary extension of other organizational policies on confidentiality, harassment, and appropriate use of company time and property.

Before implementing a social media policy, your organization might consider the following questions:

1. Should we allow our employees to access social media sites at work for their personal use?
2. Should employees be permitted to reference our organization in online postings? If yes, what disclaimers or disclosures should we require when they do so?
3. Are there special circumstances that we need to address in our social media policy? (For example, a child care organization might require special guidelines governing online communications between teachers and parents.)
4. Do we have confidential information that our employees might inadvertently disclose?
5. How will we monitor compliance with our policy?
6. What will be the consequences for violations?

Your organization may be tempted to ban employees from accessing social media sites at work. While a ban is certainly an option, employers must understand that simply blocking access to social media sites at work will not eliminate the potential embarrassment and/or legal liability that may result from their employees' inappropriate use of social media. The risks apply even if an employee makes the offensive posting at home during non-work hours.

Consequently, even if your employees are not permitted to access social media sites at work, your organization should still have a social media policy. In the Deloitte survey, 37% of employee respondents said that they rarely or never considered what their boss would think of their online activities.¹⁰ Fifty-three percent thought their online activities were none of their employer's business.¹¹ Training employees in appropriate use of social media sites and making them aware of the potential repercussions of their online activities is to the employer's benefit.

A social media policy should be tailored to the needs of each individual organization; one size does not fit all. That being said, here are some general guidelines that a social media policy might include.

1. Use good judgment in all online activities.
2. Respect the privacy rights of others in your posts and comments.
3. Do not make posts or comments that may be considered obscene, threatening, defamatory, libelous, harassing, or embarrassing to others.
4. If you post about the organization, use your real name and identify that your views are your own and that you are not speaking for your employer or the organization.
5. Do not post or comment on internal matters, particularly those involving the organization's employees. You should discuss those matters directly with your supervisor or with the Director of Human Resources.
6. Do not refer to the organization's employees / clients / students / parents/ vendors / suppliers in your online postings without appropriate permission.

⁹ <http://www.marketwire.com/press-release/Proofpoint-Inc-1027877.html> (last visited January 19, 2010).

¹⁰ *Supra* note 5.

¹¹ *Id.*

7. Do not disclose the organization's confidential and proprietary information.
8. Obtain permission to use copyrighted materials, trademarks, service marks, or other intellectual property.
9. Generally, employees should not send or accept "friend" requests from clients / parents / students. An exception is a pre-existing friendship with a client / parent unrelated to work.
10. Managers should not send "friend" requests to the employees they supervise while on or off duty.
11. An employee may reject a "friend" request from any other employee without repercussion.
12. Failure to comply with this policy, or any of our other policies, including our ethics, code of conduct, confidentiality, discrimination or harassment policies, may lead to discipline, up to and including termination.

Since the law in this area is continuing to evolve, your organization should consult an attorney about the creation and subsequent enforcement of your social media policy. For example, employers need to be careful about disciplining employees for social media activities that could be construed as "protected, concerted activity" under the National Labor Relations Act. Employers should also be careful to avoid conduct that might arguably violate their employees' privacy rights.

The Pro Bono Partnership is happy to advise your organization on a social media policy. Please contact us.

The Partnership thanks Marc Gold, Esq. of Thomson Reuters for his comments on a draft of this article.

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January 2010