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Our Employee Posted What? Employers Learn to Deal With Social Networking

By Andrew Tanick, Corporate Counsel, October 04, 2010

Friending. Connecting. Tweeting. The lexicon of social networking sites like Facebook, LinkedIn and Twitter has become part of our vocabulary and lives.

And like most social phenomena in America, these sites (and the activities of their users) have found their way into the workplace, proving to be valuable resources — as well as legal minefields — for employers.

From posting the latest vacation photos to sharing political diatribes (that delight half of their friends and infuriate the other half) to offering the exciting details of what they are making for dinner, no part of their personal lives seems off limits for social networking users.

And with this open sharing carrying over into users' working life as well — people posting notes about their co-workers, their bosses, their customers and their company's products — it's also no wonder that employers are now recognizing the need to develop and implement policies limiting and controlling their employees' work-related Internet posts.

Pre-Employment Issues

In a June 2009 survey of employers by Careerbuilder.com, nearly half of the respondents indicated that they use social networking web sites to research job candidates. According to the survey, "Of those who conduct online searches/background checks of job candidates, 29 percent use Facebook, 26 percent use LinkedIn and 21 percent use MySpace. One in ten (11 percent) search blogs while 7 percent follow candidates on Twitter."

Employers who rely on such information, however, run some risks.

Today's employers know better than to gather information about an applicant's race, marital or parental status or age, but social networking sites often reveal that same forbidden data. More often than not, social network users post photographs of themselves, list their birth date and discuss their family online. If a disappointed applicant claims to have been rejected because of age, for example, and can demonstrate that the company accessed her Facebook profile, including photographs of her grandchildren, the employer's Internet sleuthing could prove problematic.

Issues Regarding Current Employees

While employers must be cautious when using the Internet in the pre-employment process, even more concerns arise when current employees use social networking sites inappropriately. In fact, according to a new study by Proofpoint, an Internet security firm, 17 percent of companies with 1,000 or more employees have disciplined an employee for violating blog or message board policies, while nearly nine percent reported terminating an employee for such a violation.

What sorts of posts concern employers the most?

Employees posting messages, blogs updates or tweets about their co-workers is one potential minefield. Employees may post rants about the colleagues they find bothersome or annoying, or worse yet, write inappropriate romantic or sexual posts about those they find attractive.

Such communications, of course, are just as problematic when posted on the Internet as if they had been sent by e-mail, written in a note or simply spoken out loud at the water cooler. Indeed, verbal harassment online can be even more troubling than oral comments as posts are often written after hours on the offending employee's home computer, where the employer has no control. Moreover, such postings can live on forever online.

Employers are also rightfully concerned about employees' posts that cast the employer in a negative light.

For example, an angry or unwitting employee may disclose his employer's trade secrets on Facebook, divulge a patient's private medical information in a tweet or use his blog to defame a competitor, all with one click of the mouse. Even seemingly lesser offenses can cause problems.

For many employers, posts such as, "I dread going back to work tomorrow," or "My job is so boring," are in the same vein as posts that criticize the company, its products or its customers. Who can forget, for example, the employees of a popular national pizza chain who posted a YouTube video of themselves contaminating their customers' food? Such posts do not portray the business in a positive light to the viewing public and frequently lead to discipline or termination when the employer inevitably finds them.

Finally, employers who value their public image may object to employees posting statements or images that cast the employees themselves in a negative light.

In 2008, the New England Patriots fired a cheerleader after she posted "unsavory" pictures of herself on Facebook. CNN recently fired Middle Eastern editor Octavia Nasr for a tweet mentioning her admiration for a late Lebanese cleric who was part of the Hezbollah militant movement. Earlier in 2010, a St. Louis non-profit fired an employee after discovering that she also operated a sex-themed blog in her spare time.

In all of these cases, while the employee's posts did not directly relate to their employment, the employers understandably viewed the posts as grounds for termination.

Meeting the Issue Head-On: Internet Usage Policies

Incidents such as these emphasize employers' need to implement and enforce clear, written policies regarding their employees' use of the Internet. While many states restrict an employer's ability to take action against an employee based on non-work activities, those restrictions may not apply where the activities directly impact the employer.

Therefore, a good "Internet use" policy must be carefully drafted to apply only to Internet use that relates to, or reflects on, the employment setting. Such policies should include the following points:

- Communications that would violate the employer's harassment or offensive behavior policy are equally prohibited if posted on the Internet;
- Confidentiality policies, including policies regarding client or patient confidentiality, apply with equal force to Internet posts;
- Employees should not identify their employer in their personal Internet posts or use company logos, trademarks, etc. without the company's approval;
- Employees should state that the views expressed in their posts are personal and not those of the company;
- Employees should not post disparaging comments about their employer, co-workers, the company's products or services, customers or even competing companies; and
- Employees should not post statements, photos or videos that reflect poorly on their employer.

In addition to promulgating a separate Internet use policy, employers should revise their existing harassment, misconduct and confidentiality policies, among others, to make sure they cover online conduct.

Of course, employers must take caution not to be overzealous in monitoring employee use of social media or taking adverse action based on that monitoring. As noted above, posts that relate to the employee's membership in a protected category may be legally protected.

In addition, an employee's post about the employer's illegal activities may be protected by state or federal "whistleblower" laws, and posts about certain working issues or conditions may be protected under the National Labor Relations Act. And legal issues aside, many employers have simply made the policy decision that they prefer not to restrict or monitor their employees' Internet use at all, despite the risks, because such actions could negatively impact employee morale.

Just as the advent of the Internet and, with it, social networking Web sites, has changed the way we communicate, keep in touch and relate to others, it has forever changed the face of the workplace. Employers who are already grappling with the ever-changing laws, statutes and regulations impacting their workplace now need to consider how to respond to the workplace implications of social networking.

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Vocabulary

Determine the meaning of each word below from its use in Tanick's article. If you cannot infer the meaning, look up the word in a dictionary. Write the definitions by hand; the act of transcribing helps you remember the meanings. After you look up every word and understand it, re-read the article carefully.

- tweeting
- lexicon
- diatribe
- infuriate
- internet post
- blog
- Twitter
- sleuthing
- minefield (figurative)
- unwitting
- divulge
- defame
- cleric
- Hezbollah
- disparaging
- promulgate
- adverse
- advent

Thinking Critically

Answer each question as completely as you can, using well-formed sentences. Although there is no "correct" answer, please be sure to support your answer with evidence from the text.

1. If you had to state the main point of Tanick's essay in one sentence, what would it be? Who seems to be the intended audience of Tanick's essay? What makes you believe this?
2. Tanick writes, "In a June 2009 survey of employers by Careerbuilder.com, nearly half of the respondents indicated that they use social networking web sites to research job candidates." He goes on to quote statistical data about the sites that potential employers used to search candidates. What effect does the statistical data have? Does this information surprise you? Why or why not?
3. In August of 2010, Dr. June Talvitie-Siple, a supervisor of the math and science program and a teacher in the Cohasset, Massachusetts school system, was asked to resign from her position after she posted some comments on Facebook. Click on the sentence below to view the story.

   Click here to watch an interview with Dr. June Talvitie-Siple.

   Dr. Talvitie-Siple posted, "Residents are so arrogant and snobby" and "So not looking forward to another year at Cohasset schools." Do you believe that Dr. June Talvitie-Siple was treated unfairly? In his essay, Tanick cites examples of individuals who were fired because of their Internet activities. He writes, "In all of these cases, while the employee's posts did not directly relate to their employment, the employers understandably viewed the posts as grounds for termination." Do you believe that these issues should be grounds for termination? Justify your answer.

4. In the section "Meeting the Issue Head-On: Internet Usage Policies," Tanick offers employers suggestions about what employers should do to stave off problematic issues concerning employee Internet use. Which of these suggestions do you think might be effective? Why?

Writing Assignment: According to prominent blogger and career coach Penelope Trunk, "blogging is essential for a good career." Click here to read Trunk's blog entry about the importance of blogging and a good career. It seems that to succeed economically, individuals must have an online presence.

Analyze your own Internet activity. Do you post on Facebook, MySpace, Twitter, or other social networking sites? Do you send and receive personal email at work? Do you use your phone to post on Facebook at work? Do you have your own blog or do you post on blogs? Do you have your own website? Do you make purchases online? Do you visit Internet sites from your workplace that your employer may find questionable? Write a 500-word essay where you examine the areas of your own online activities that may help or hinder you professionally. In your essay you should analyze how your online presence might help or hinder you in finding a good job or in keeping one.