



The new world of social networking:

Is your company ready for the revolution?

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Introduction

A manager in your company is interviewing prospective employees. The decision is down to the final two candidates. The supervisor decides to look at Facebook and finds that one of the candidates belongs to a group that he finds offensive to his beliefs and hires the other person. He even states this as the reason for his choice. The unselected candidate sues the corporation for discrimination and wins. You and your company have just entered the new world of liability associated with social networking.

Social networking according to Wikipedia free encyclopedia is a structure of people who share common elements such as friendship, interests, likes and dislikes. There can be many different types of ties between people on social networking sites. These ties bring groups of people together.

With social networking an integral part of life as we know it, the use of these networking sites by company employees is also escalating. Several years ago, most companies did not use this medium nor did their employees. This article will provide some background into social networking, discuss some of the types of hidden risks associated with the medium and finally provide sample elements of a social networking program. However, the question that begs to be answered is what has created this paradigm shift?

It is not just employees' views toward social networking that are changing; businesses are also using social networks on a routine basis.

The changing business environment

The paradigm shift is partially due to the changing nature of the business environment. Consider that new hires in the work place today have grown up with social networks. The use of these networks is not limited to younger workers. People of every age group now blog, text and tweet. The use of social networks such as Facebook, Twitter and LinkedIn are considered a routine part of everyday life; therefore, it's not surprising that employees expect to be able to connect to these sites from work. A company that blocks these networks might find that their employees are connecting to these sites using their personal mobile devices during work hours, at lunch and while on break.

It is not just employees' views toward social networking that are changing; businesses are also using social networks on a routine basis. Today, companies use these sites to market their services and create business models that capitalize on these broad distribution capabilities. Literature supports the strength of distributing a brand virally (spread quickly in a short amount of time, normally by word of mouth) through these distribution outlets. Additionally, many senior leaders of organizations are now communicating with their employees through blogging. This change in business culture is forcing risk managers to review policies for organizations and employees relating to business models and utilization of social networks.

The change in business today and the use of social networking sites means that employers who previously might have ignored this exposure or dealt with the use of social networking at work by banning or blocking these sites must address these exposures. They are finding that ignoring social networking does not relieve the

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company of the potential liability that exists from what is being posted on these sites. There is also a potential liability exposure for the company for what employees are posting on their personal sites. This does not mean that companies should not pursue this new method of communication; it does however mean that risk managers should review or develop their company policy regarding the use of social networking sites.

The exposures

Exposures from use of social networking include liability from trademark and copyright infringement.

The liability exposures for companies regarding social networking are changing, and as they continue to evolve, the Federal Trade Commission (FTC) has begun to address social networking sites in their codes. An example of this is the Federal Trade Commission Guide section 5 that took effect on December 1, 2009. This section of the code discusses examples that can lead to employer liability (Section 255.5 Disclosure of material connections). One example of this is Example 8 in the section:

“Example 8: An online message board designated for discussions of new music download technology is frequented by MP3 player enthusiasts. They exchange information about new products, utilities and the functionality of numerous playback devices. Unbeknownst to the message board community, an employee of a leading playback device manufacturer has been posting messages on the discussion board promoting the manufacturer’s product. Knowledge of this poster’s employment likely would affect the weight or credibility of her endorsement. Therefore, the poster should clearly and conspicuously disclose her relationship to the manufacturer to members and readers of the message board.”

The question a risk manager must ask is: Can this happen to the company I work for? Do you have employees who use chat rooms or message boards telling people how great your company product works? A post that does not indicate that they are an employee of the company could lead to a false advertisement or employer liability action against your company. This ruling makes it clear that employers can be held responsible for what the employees post in chat rooms. As companies go further into the use of social networking, they need to consider implementing policies and procedures to reduce their exposures from any possible trademark or copyright laws while they develop material for the company website. Consider the loss of reputation that could occur for a company that posts trademark or copyrighted information on its company website.

Confidential information

Most companies have policies and procedures in place that will prevent the leaking of confidential and proprietary information. However, as more people use social networking and mobile devices, a policy covering this new medium must be addressed. Imagine a committee working on sensitive information using a private

group site on a social network. This information could become public very quickly if a security breach at the site occurs. It is important to remember that not all sites have adequate firewalls to protect against security breaches.

Human resource issues

There are also a host of potential human resource exposures from harassment to bullying that must be addressed in your policy. Companies could be held liable for what their employees do and say while online. An example of this would be a supervisor who has a great idea to promote group harmony. He joins a social network and invites all of his employees to friend him. One employee decides to reject this invitation. The supervisor and others on the team urge the employee to join them on the site. The employee still resists and the others make fun of him or her. This could be considered harassment. What started out as a great idea could cause a liability and harassment exposure for the company.

Copyright and trademark infringement

Many people who post on networking sites or even your own company's website will use information or pictures that they find on other websites. Many people mistakenly believe that if information or pictures are on the internet that they can be used in other areas of the internet. An example of this would be a person who posts a presentation that contains cartoons to illustrate a point to a networking site or on the company website. The presentation is well received. You then receive correspondence from the cartoonist or his lawyer with a cease and desist for violating copyright and an invoice for use of the cartoon. This example can and does happen daily.

Just as the practice of social networking is evolving, so are the laws in this area. It is recommended that you have your legal representatives review the social networking policy before publishing.

Social networking policy elements

The best case would be to have a strong policy with regard to social networking that is reviewed by your legal staff. Some items you might want to include in your policy are outlined below. Just as the practice of social networking is evolving so are the laws in this area. It is recommended that you have your legal representatives review the social networking policy before publishing. The idea that you can just avoid the topic and not have a policy is no longer a viable solution. You would not want to be the company where an employee sends out tweets to others describing how managers were not getting along during a meeting or how layoffs were pending before you were able to address the issue.

Suggested items to include in your organization's social networking policy

Social networking definition

The first question to ask is what is your company's definition of social networking? This term means different things to different people. Some might think of it as networking sites such as LinkedIn or Facebook, while others might include such items as blogs and tweets. Yet again, other employees might consider social networking email, chat rooms, company websites and other forms of communication. Without a clear and comprehensive definition, you might be overlooking important areas that could lead to an exposure.

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Is social networking allowed?

Determine what sites, if any, employees will be able to access from their work computer. This might be a changing area and will need to be updated as more companies start using more social networking as a means of marketing their goods and services. You might also have a limited use of social networks permitted where employees are instructed that use of social networks for other than business-related activities during working hours is not allowed. One example of this is some companies might allow employees to join the professional networking site LinkedIn from work, but not allow Facebook.

Employee profiles

Social networking sites normally have user profile pages where the name of the company and your job title can be entered. Employees who enter information in these fields could be taken for a representative of the company. Additionally, any information they post on the site could reflect on your company image.

One way to reduce this exposure is to have a policy that prohibits employees from listing the company name on any profile listing on social network sites that are not associated with their profession. If you do decide to allow employees the ability to reference the company in their profile, they should be instructed that they must post a disclaimer that states that all views presented are theirs and do not reflect the views of your organization, or they should refrain from posting any statements regarding your company. Employees should also be instructed that they should not use their real names and relationship or role to the company when writing about the company in chat rooms to prevent the possibility of employer liability exposures.

Behavior / code of conduct

Social networking, blogging and tweeting can lead to confidential information and intellectual capital being leaked. Your policy should state how this and other information must not be discussed or even referred to on these sites. Employees who are encouraged to blog should be given training on what is acceptable material for blogs. You would not want a senior executive including information in a blog that could lead to a Human Resource issue or release private information about the company. This should include private chats among current employees as this information is subject to hacking and becoming public property. You need to consider having employees post disclaimers on all blogs stating that they do not reflect the views of your company. Additionally, employees should be told that their views may not use company logos or trademarks without written permission.

A code of conduct should also be developed that states the company prohibits harassment or discriminatory remarks by employees or managers. This policy should follow your Human Resource policy for this type of behavior.

Communication between managers and employees on social networking is an area that could lead to possible Human Resource issues. Managers should not send friend requests to their employees on or off duty. Additionally, the policy must reinforce the fact that employees can reject any other employee's friend request invitations without fear of reprisals. This policy should extend to former employees and clients.

The final area to be considered is a disciplinary process for individuals who do not follow your social media policy. This procedure should be consistent with existing Human Resource policies.

Monitoring social media

While business today is using social media for marketing and other information, a good risk management policy should consider implementing a control process to monitor social networks for negative comments regarding the company or its employees. Negative comments should be addressed and documented. A procedure should be established that includes identifying yourself as a representative of the company and ask the individual posting how you can help them. Keep in mind you should never criticize people who post negative comments as this could only lead to aggravating the problem. There are numerous service providers that have the ability to scan network sites to track what is being written about your company.

Conclusion

Social networking is part of the ever expanding role of technical communications in the work place. This article has provided information on several types of exposures associated with social networking, as well as items to be considered in a sample policy. Treat social media as any other company means of communication and you should be able to set guidelines that fit the culture of your business. You can no longer avoid the issue of a social media policy as this could potentially place your company's name in tomorrow's headline.

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