USE AND ABUSE OF SOCIAL MEDIA IN THE WORKPLACE

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Employee Misuse of Social Media

Unemployable due to stupid personal stuff I put on my Facebook page.

Me too!

For me, it was an embarrassing YouTube video.

Signs of the social networking times.
Employees Misuse Social Media

By:

• Disclosing their employer’s trade secrets and proprietary information

• Leaking confidential information such as marketing tactics or pricing strategies (or battlefield plans!)
Employees Misuse Social Media

By:

- Discussing confidential personnel matters
- By “cyber-smearing” — disparaging/embarrassing their employer/clients/customers/coworkers
Employees Misuse Social Media

By:

- Infringing on intellectual property rights
- Posting inappropriate or criminal content, including discriminatory or pornographic comments and images ("sexting")
Sexting = $50,000 fine and a harassment lawsuit for Brett Favre
Sexual Harassment and Misconduct

- Cyberstalking a colleague by Facebook pokes, Twitter tweets, or instant messaging
- Or the "old fashioned" ways of texting and e-mails
- Mixing appropriate business-related content with inappropriate personal content
- More casual forms of communication mean more problems
Sorry, but it’s gotta go. Management says it could be used to access Facebook.
Social Media: Defamation Made Easy

Elements of Defamation:

- A false statement;
- Published to a third party without privilege or authorization;
- With fault amounting to at least negligence; and
- Causing special harm or constituting defamation per se.
Employees Also Misuse Social Media By:

- Texting/e-mailing while driving
- Violating state laws
- Creating liability for employer
- Endorsing their employer’s goods/services without disclosing their employment relationship
Employees Misuse Social Media

By:

- Excessive use - Slowing the systems
- Wasting time – “cyberloafing”
Employees Misuse Social Media

By:

• Risking virus contamination of the employer’s IT system

• Viruses can be spread through social networking sites

• Making offensive statements on social media sites that coworkers who have been “friended” can see
Employees Misuse Social Media

By:

- Giving recommendations on LinkedIn that violate the employer’s neutral reference policy
- Soliciting former employer’s clients/employees (using LinkedIn contacts or Facebook friends) in violation of a restrictive covenant
- Infringing on proprietary content and using social media to experience and/or share that content, thus violating copyright laws.
Employer Monitoring of Employee Social Media
For What Legitimate Reasons Might an Employer Want to Monitor?

- To safeguard its confidential information/trade secrets
- To avoid or reduce harassment/discrimination claims arising from offensive content posted on social media
- To increase employee productivity by reducing time spent at work using social media for personal purposes
"It's time for my monthly report. What's a productive way of saying, surfed the web and hung out in chat rooms?"
What Can You Do?

- Monitor employee e-mails
- Statistics show that 3 out of 4 employers monitor employee e-mails
- E-mails sent using your systems, devices are your property
Monitoring Employee E-mails

You can absolutely do it
• The Supreme Court recently upheld monitoring of text messages sent by an employer-issued pager in Quon v. City of Ontario

• The City did it the right way: policy, training and judicious and limited review of the text messages
What Can You Do?

Monitor Internet usage

- At least \( \frac{2}{3} \) of employers monitor employee Internet usage
- Even less of a privacy concern
- Little, if any, litigation reported
Monitoring Internet Usage

- Practical Considerations
- Do you focus on the time waster, the bad actors, or both
- Productivity is easy to measure here
- Again, be wary of selective enforcement claims
- Another great way to show you are serious about your no-harassment policy
- Bar access to specific sites, if needed espn.com during the NCAA tournament
- Facebook, Twitter and other sites that are true time wasters
- Grant access on an as-needed basis for work-related usage
Forget Twitter, this is REAL minutiae tracking. It updates my Facebook, Plaxo, and LinkedIn contacts with every detail of my life with one click.

Yeah, thanks for flooding my inbox with the details of your colonoscopy yesterday.

They haven't removed it from YouTube yet, if you want to see it again...
What Can You Do?

• Monitor Social Networking Sites/Blogs/Communities
  • Misconduct...
    She said what about her manager or coworker?
    She said what about the company?
  • ... or protected activity
    National Labor Relations Act
    EEO complaints Sarbanes-Oxley or other whistleblower complaints
BETHE IS OUR NEW MARKETING MANAGER FOR SOCIAL MEDIA.

BY THE WAY, COMPANY POLICY FORBIDS THE USE OF FACEBOOK AND TWITTER AT WORK, AND WE DON'T TRUST YOU TO WORK FROM HOME.

IF YOU BLOG ABOUT HOW LAME WE ARE, YOU'RE FIRED!!

FIRST DAY, NOT SO GOOD.
What Can You Do?

Do not access password protected websites without permission; this could be a violation of the stored communications Act.
Lawful, Off-Duty Conduct

- Be mindful of expanding State law protections of private, off-duty conduct
  At least 9 states have such laws, including New York, Connecticut, and California
- Degree of protection for off-duty conduct varies
  In New York, a lawful outside of work activity is not protected if it creates a material conflict of interest for the employer
- Not clear how far protections extend
QUESTIONS??