

# WHAT EMPLOYEES SHOULD KNOW ABOUT SOCIAL MEDIA:

## THREE THINGS EVERY EMPLOYER AND EMPLOYEE NEED TO KNOW ABOUT SOCIAL MEDIA

by Augie Ray

THE TOPIC OF EMPLOYEES' RIGHT TO PRIVACY AND EXPRESSION IN SOCIAL MEDIA HAS BEEN FRONT AND CENTER OF LATE. SOCIAL MEDIA EMPLOYMENT NEWS HAS INCLUDED DELTA'S GETTING CALLED OUT FOR THE NON-WORK ACTIVITIES OF AN EMPLOYEE, FACEBOOK'S STAND AGAINST EMPLOYERS' ASKING FOR JOB CANDIDATES' SOCIAL NETWORK PASSWORDS, AND THE LATEST IN A LONG LINE OF EMPLOYEE FIRINGS FOR THINGS THEY HAD POSTED TO SOCIAL NETWORKS.

WHILE SOCIAL MEDIA CONTINUES TO EVOLVE – AND MUCH WILL CHANGE IN THE YEARS TO COME – EVERY EMPLOYER AND EMPLOYEE SHOULD UNDERSTAND A FEW SIMPLE THINGS. BEING IGNORANT OF SOCIAL MEDIA RISKS, BEST PRACTICES, AND LAWS IS NO EXCUSE FOR EMPLOYEES' MAKING CAREER-ENDING MISTAKES OR EMPLOYERS' STUMBLING INTO COSTLY LEGAL AND BRAND REPUTATION ERRORS.

### WHAT EMPLOYERS SHOULD KNOW ABOUT SOCIAL MEDIA:

#### 1. TRAINING AND COMMUNICATION ABOUT CORPORATE SOCIAL MEDIA POLICIES ARE ESSENTIAL:

Some companies have no social media policy, but most have come to recognize that existing communication policies are insufficient to protect employers and employees from the nuances and unique risks of social media. Other organizations have a policy but fail to educate employees on the risks and ramifications of their actions in social media; this is almost as dangerous as having no policy at all. Simply put, your employees – particularly younger ones who are social natives – are ill-equipped to understand the corporate, regulatory and legal risks of their social media activities. If you are not reinforcing to them what is expected, what will get them and the company in trouble, and the consequences of mistakes, your brand is accepting needless risks, and you are not doing your employees any favors.

#### 2. GIVE EMPLOYEES EVERY OPPORTUNITY TO VENT IN PRIVATE AND APPROPRIATE CHANNELS:

Nothing a company does will prevent some employees from turning to social media to voice complaints, because social media sharing is second nature to too many people. Nevertheless, that should not prevent companies from trying to prevent as many social media problems as possible. The answer is not to prevent social media access at work – employees all carry their social networks in their pockets or purses nowadays – but instead to furnish multiple ways for employees to share feedback within the company. This includes passive solutions, such as offering intranet forums where employees may discuss concerns, and proactive solutions, such as organized employee gatherings and groups to collect feedback. The best solution is nothing new: strong, active, open and engaged leadership that listens to employees.

#### 3. DO NOT ASK FOR CANDIDATES' OR EMPLOYEES' PASSWORDS:

Asking for employees' and candidates' social media passwords is problematic for several reasons. First, doing so might expose you to information that the person is in a protected group, which could then open the company up to a discrimination claim. Also, your organization could suffer a blow to its reputation if a candidate or employee discloses the practice. In hiring situations, you might lose a qualified candidate concerned that your organization demonstrates a hostile and distrustful relationship with employees. Finally, this practice requires employees to violate Facebook's Statement of Rights and Responsibilities, which states, "You will not share your password... let anyone else access your account, or do anything else that might jeopardize the security of your account." Some assert there are legal risks to asking employees and job candidates for their passwords. I am not a lawyer and cannot advise you on the legality of checking social media for information on candidates, but asking for passwords is a dangerous and risky policy.

#### 1. IF YOU MANAGE PEOPLE, NEVER DISCIPLINE AN EMPLOYEE FOR WHAT YOU SEE IN PERSONAL SOCIAL MEDIA PROFILES WITHOUT CONSULTING LEGAL OR HUMAN RESOURCES PROFESSIONALS:

Imagine a scenario: You visit an online forum or social network and find your employees disparaging you, your peers or your company, in full view of prospects, customers and vendors. If you were to discipline the employees or consider a request that they refrain from further criticism, your actions could result in a variety of legal problems, including charges of unfair labor practices by the National Labor Relations Board (NLRB).

Some employee complaints are protected by law; others are not. The NLRB is actively shielding workers' rights to use social media to discuss the terms and conditions of their employment and criticize their employer. Recent NLRB decisions have ruled against companies that fired employees for complaining about coworkers' promotions, company policies or managers. Managers cannot know every employment law or ruling, but your HR and legal department resources do. Use them, and do not take unilateral action that can cause you more problems than a whiny employee.

#### 2. WHAT YOU SAY AND DO IN SOCIAL MEDIA CAN GET YOU FIRED:

You probably know that social media can help you land a job; if so, it should come as no surprise that social media can also help you lose one. Though the First Amendment may guarantee you the right to free speech, it protects you only from government infringement on your rights and does not apply to private companies.

The NLRB may be actively seeking to protect workers' rights to use social media to complain about working conditions, but that hardly means you have an open invitation to gripe. The NLRB has upheld many employee discharges for social media posts, and chances are you do not and will not recognize the difference between a protected post and an unprotected one. Even if you do, relying on legal recourse rather than common sense is a very bad career idea. It won't help your reputation at your current organization or with potential future employers if you become known for publicly griping about coworkers, bosses or company policies.

Do not post anything in social networks – even ones where you presume the right of privacy – that you would not say or send to a boss or co-worker. If you have concerns about your employers' policies, you are much more likely to bring about positive change and protect your job by communicating these issues within your organization rather than on Facebook or Twitter.

#### 3. YOUR EMPLOYER HAS A GOOD REASON TO MONITOR YOU ON SOCIAL MEDIA:

It has been my experience that many employees are concerned about having employers keeping an eye on their posts and tweets. This concern is understandable – there is an uneasy element of Big Brother to monitoring by an employer – but it is also important to recognize that employers have good and reasonable reasons to do so. A lawyer friend of mine recently said, "Companies do not monitor to pry into the personal lives of their employees. They monitor because they are required to."

Corporations have a fiduciary responsibility to protect the company's assets, and those include the reputation of the firm. They also have a legal responsibility to protect everything from trademarks and patents to private information about customers. Moreover, the FTC has indicated that companies must monitor the people who have material relationships with the firm to ensure they disclose the relationship when praising the company in social media. If your firm is in any sort of regulated industry, there are probably a host of regulatory agencies with rules that require monitoring, record retention and auditing policies.

Chances are your employer does not care that you love Ron Paul, support Occupy Wall Street or listen to Lady Gaga, but many companies have established or will need to set up monitoring practices to do what shareholders, governments and regulators expect and require. If employers are smart, they will use monitoring to find employees who are participating in social media in troublesome ways and counsel those workers before they cross a line that results in lost employment and income.

It may seem to some that social media has matured and become a way of life. That is far from true – social media will continue to challenge and change laws, regulations, business practices and the nature of the employee/employer relationship. Until the dust settles – and that will not be for many years – employers and employees alike are better off proceeding with caution. There are many landmines waiting for companies and workers in our new and evolving social era.\*

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\*This article first appeared on Experience: The Blog.

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