

EMPLOYMENT ALERT

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The Interactive Internet: Are Your Corporate and Employment Policies Twitter-Resistant?

Lawyers generally have no hesitation posting sometimes lengthy bios on law firm websites. What is new and different is that some of us also have Facebook, MySpace, or a collection of social networking pages. We bet your employees, do, too. But have your corporate and employment policies kept up with the potential upsides and inevitable downsides of interactive use of the Internet?

A recently published report of a joint study by the Society for Corporate Compliance and Ethics (SCCE) and the Health Care Compliance Association (HCCA) provides some insight into how employers are dealing with compliance issues relating to social networking. (*Facebook, Twitter, LinkedIn and Compliance: What Are Companies Doing?*) The report indicates that half of the respondents to the study's survey do not have a policy that addresses employee online activity outside the workplace. Other companies offer some guidance in their general policies on online usage, although few of those policies explicitly address the use of social networking sites. Moreover, although only half the respondents have policies, a quarter of them nonetheless reported that they have disciplined employees for activities on Facebook, Twitter, or LinkedIn. (As we all understand, discipline without a policy is riskier than discipline in accordance with a policy.) The report's take-away is that social networking technology has outpaced corporate policies addressing the pitfalls of the technology.

Certainly, social networking sites offer potential corporate benefits. Corporate "fan pages" are proliferating on Facebook. These interactive tools can foster corporate-customer communications and build the company's brand, and they can serve as recruiting tools.

But employers should be mindful of the pitfalls occasioned by social computing. With respect to general corporate policies, interactive Internet sites tend to compound potential legal problems that arise from corporate communications. While press releases and other public disclosures might traditionally have been subject to painstaking corporate chain of command and legal review, the immediacy of the Internet now can encourage premature posting of not-completely-vetted corporate information. This enhances risks in traditional legal areas such as antitrust, securities compliance, intellectual property, and a range of other legal considerations ranging from fraud to deceptive trade practices. Reviewing corporate policies in light of these risks is recommended.

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The increase in social networking activities by employees also warrants a fresh review of employment policies. What guidance does the Employee Handbook provide about employee use of social networking sites (beside the obvious rules, such as don't play on Facebook during work hours)? What may an employee report about the company in a MySpace posting, a blog, or in a Twitter "tweet" that all might see? Are there consequences for an employee – even using his or her own computer on his or her personal time – who posts derogatory information about a co-worker or who publicly raps her boss as the "lunatic-in-charge"? Can anything be done about a disgruntled former worker's plan to vent about the company online?

How an employer can best approach these issues will depend on the types of risks that employer faces. The selected approach also may depend on the corporate culture and the importance of the interactive internet to the business. All employers will be well-served, in any event, to consider whether they have adequate policies in place to accommodate the brave new world of social networking.

If you have any questions about this update or about your corporate or employment policies, please contact one of our attorneys.

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