

## BETWEEN A TWEET AND A HARD PLACE: THE CHALLENGES OF SOCIAL NETWORKING FOR EMPLOYERS

*As published in the July/August issue of the National Association for Health Care Recruitment newsletter*

To say that the use of social networking tools has exploded in the past several years is an understatement. Some studies suggest that of the millions of Americans who use the internet, nearly half frequent social networking websites such as Facebook, Twitter, LinkedIn and MySpace. These social media platforms have become an increasingly popular way for people of all ages to share ideas, vent frustrations and generally communicate with one another like never before. This growth may be attributed to parallel development in technology and the widespread availability of social networking tools on a variety of computing devices, including now ubiquitous mobile phones such as iPhones and Blackberries.

The use of these social networking tools in the workplace has also grown exponentially. It is common for employees to use social networking tools for personal purposes to post or share comments about their co-workers, superiors and their work life generally and many do so while at work. This provides a number of opportunities, as well as significant risks, to employers who allow their employees to access social networks at the workplace. Employers may be exposed to potential harm by the conduct of their employees, including injury to corporate reputation, disclosure of company trade secrets, confidential financial information or information protected under federal statutes like HIPAA and GINA. Compounding these concerns is the immediacy of the medium, the vast reaches of the audience and the unavailability to retrieve information that has been posted on social networking sites. Instead of waiting to react to potential problems when they arise in connection with social networking tools, employers should anticipate the potential problems and take steps now to develop and implement employment policies to address the multiple issues generated by employee use of social networks.

Employers can take a variety of approaches to regulating the social networking behavior of their employees. Some employers have instituted a complete ban while others have developed comprehensive policies designed to help control employee use of the social networking tools while on the job. In developing these policies, employers should be careful to strike an appropriate balance between allowing or encouraging employee usage in the workplace while at the same time recognizing and addressing the risks the tools represent, taking into account the culture of the organization.

### For More Information

**Nicholas Kampars**  
503.778.5364  
nicholaskampars@dwt.com

**Jenna Mooney**  
503.778.5305  
jennamooney@dwt.com

If an employer opts to allow employees to access social networking sites while at work, the first step should be to convene a working group of the employer's professionals, including representatives from Human Resources, Information Technologies, Marketing, Public Relations, as well as active employees who use social networking sites, to develop a policy and framework for approaching and implementing the policy in the workplace. The goal of the meeting should be to identify the issues unique to the employer. Topics may include the type of information the employer considers confidential, the frequency of employee usage of social networking sites while on the job, as well as the potential benefits to the employer of having a presence on social networking sites. If the latter is an option, then the employer should determine who will have access to and monitor the company's profile, so as to maintain integrity of the company's brand and control the content posted to the profile.

Once the issues have been identified by the working group, human resources and upper management should begin to develop a policy. Due to the rapidly changing nature of the area, the special circumstances unique to each employer, and the relative dearth of case law addressing many of the issues involving social networking, legal counsel should also be engaged at this stage. Employers should consider the following issues in developing a policy:

1. Decide whether to allow an employee to use the company's computers and networks to post, tweet, or blog, and if so, subject to what kinds of restrictions. The employer may wish to remind employees that employer communications equipment is the property of the company and that unless specifically authorized by the employer, time spent on personal or third-party sites cannot interfere with the employee's job duties. Similarly, if allowed by state law, remind the employee that any activity on employer-owned equipment is the property of the employer and the employee has no right to privacy when using employer-owned equipment.
2. Remind employees of fiduciary obligations so that if they identify or otherwise comment about the company on social networking sites, they understand their obligations. Employees should also be instructed to avoid commenting about the company's private information, using confidential information, or discussing internal matters.
3. For unionized employers, consider whether there is a duty to bargain with any union about the adoption or implementation of a social networking policy.
4. Are the company's other policies, such as anti-harassment, discrimination or confidentiality provisions, consistent with and referenced in the social networking policy?
5. Consider how to implement the new policy, monitor its application and train employees as to the proper use of social networking sites.

## For More Information

**Nicholas Kampars**  
503.778.5364  
nicholaskampars@dwt.com

**Jenna Mooney**  
503.778.5305  
jennamooney@dwt.com

Once the policy is developed, it should be clearly and unequivocally communicated to employees and training should be implemented as appropriate. An employer should also continue to revisit and revise the policy at least on an annual basis to keep up with the ever changing technological advancements in social networking. Finally, if an employer implements a policy and then determines an employee has violated it, the employer should seek legal counsel prior to any termination based on the policy.

## For More Information

**Nicholas Kampars**

503.778.5364

[nicholaskampars@dwt.com](mailto:nicholaskampars@dwt.com)

**Jenna Mooney**

503.778.5305

[jennamooney@dwt.com](mailto:jennamooney@dwt.com)