

Managing in an Electronic Workplace

Eric Swenson

RSJ/Swenson LLC

CalCPA Education Foundation

2009 Employment Practices Seminar



Overview

- Social Media Overview
- Information security
- Employee privacy
- Surveillance and monitoring
- Email use and abuse
- Best practices from hire to fire

Social Media - Overview

- Facebook
- Myspace
- Twitter
- LinkedIn
- Blogs

Facebook

The Facebook logo, consisting of the word "facebook" in white lowercase letters on a blue rectangular background.

- Social networking website founded in 2004.
- Easily the world's most popular social networking site, with as many users as the United States has people.
 - Number of Members: 300,000,000
 - Monthly Visits: 1.19 billion
 - Average page views per visitor: 14
- Average time user spends on Facebook: 28.8 minutes

My Space



- Social networking website.
- Owned by Fox Interactive Media (News Corporation).
- The most popular social networking site in the United States in June 2006, overtaken internationally by Facebook in April 2008
 - Number of Members: 200,000,000+
 - Monthly Visits: 810 million
 - Average page views per visitor: 18¹
 - Average time user spends on site: 18.1 minutes

Twitter



- Free social networking and micro-blogging service that enables its users to send and read messages known as *tweets*.
 - Tweets are text-based posts of up to 140 characters displayed on the author's profile page and delivered to the author's subscribers who are known as *followers*.
 - Number of Members: 14,000,000
 - Monthly Visits: 54.2 million
 - Average page views per visitor: 7.15
 - Average time user spends on site: 8 minutes

LinkedIn



- A business-oriented social networking site launched in May 2003
- Mainly used for professional networking.
 - Allows registered users to maintain a list of contact details of people they know and trust in business. The people in the list are called Connections.
- Employers can list jobs and search for potential candidates.
- Job seekers can review the profile of hiring managers and discover which of their existing contacts can introduce them.
 - Number of Members: 50,000,000
 - Monthly Visits: 42.7 million
 - Average page views per visitor: 9.32
 - Average time user spends on site: 6.5 minutes

Blogs

- A contraction of the term "weblog") is a type of website, usually maintained by an individual with regular entries of commentary, descriptions of events, or other material such as graphics or video.
- Many blogs provide commentary or news on a particular subject; others function as more personal online diaries.
- A typical blog combines text, images, and links to other blogs, Web pages, and other media related to its topic. The ability for readers to leave comments in an interactive format is an important part of many blogs. Most blogs are primarily textual.
 - Number of U.S. Residents who have a blog: 132,852,000
 - No statistics available on how much time is spent reading blogs.

Legal Issues For Employers

- **Slander, defamation, and libel.**
 - You could be held liable if an employee posts negative statements about another person or a competitor on a website or blog.
- **Trade secrets and intellectual property infringement.**
 - Disclosure of certain trade secrets can destroy the "confidential" status of the information
- **Trade libel.**
 - Misstatements or misrepresentations about a competitor could lead to claims of trade libel.
- **Securities fraud and gun-jumping.**
 - Publicly traded companies can face sanctions for securities fraud if material misrepresentations are posted. Any postings plugging the registered company could violate federal securities law.
- **Employment actions.**
 - Employees may try to sue you for wrongful termination or discrimination if their employment is terminated because of postings that reference personal aspects of their life (*e.g.*, marital status or sexual orientation).
- **Harassment.**
 - Language that is harassing, discriminatory, threatening, or derogatory could prompt a lawsuit.

Additional Challenges with Internet & Social Media

- *Loss of productivity*
- *Social engineering and phishing*
 - This can result in data or identity theft.
 - Most people don't divulge details to strangers but
 - It's amazing what data can be gleaned from social networking sites-- personal e-mail addresses and even social security numbers!
- *Sites are attractive to hackers and spammers*
 - Social networking sites are attracting hackers armed with malware of all kinds: spyware, viruses and online scams.
- *Leaking of proprietary and/or confidential company information*

The Waste of Productive Work Time

Top Time-Wasting Activities	(%)
1 Surfing Internet (personal use)	44.7%
2 Socializing with co-workers	23.4%
3 Conducting personal business	6.8%
4 Spacing out	3.9%
5 Running errands off-premises	3.1%
6 Making personal phone calls	2.3%
7 Applying for other jobs	1.3%
8 Planning personal events	1.0%
9 Arriving late / Leaving early	1.0%
10 Other	12.5%

Waste of Productive Worktime, cont.

- The average worker admits to frittering away 2.09 hours per 8-hour workday, not including lunch and break-time.
- As a matter of practice, companies assume a certain amount of wasted time when determining employee pay.
 - However, employees are wasting about *twice* as much time as their employers expect.
- Employers spend \$759 billion per year on salaries for which real work was expected, but not actually performed.
- Employees say they're not always to blame for this wasted time:
 - 33.2% of respondents cited lack of work as their biggest reason for wasting time.
 - 23.4% said they wasted time at work because they feel as if they are underpaid.

What's Happening in the Workplace

- 17 percent of businesses disciplined an employee for violating blog or message board policies.
- Nearly 9 percent reported terminating an employee for such a violation
 - Twice as many as in 2008
- Short message services like SMS texts and Twitter also pose a risk. 13 percent investigated an exposure event involving mobile or Web-based short message services in the past 12 months.

2009 In Social Media

- Jurors' tweets triggered calls for mistrials in Arkansas and Pennsylvania in March.
- A renter was sued in July for \$50,000 for mentioning her Chicago landlord's name in a tweet about a moldy apartment.
- Media outlets from ESPN to *The Roanoke Times* have adopted social networking policies after staffers' tweets about news and company meetings made management wary.
- The Marine Corps banned the use of social media sites on government computers this summer, and the military is considering wider restrictions even as recruiters acknowledge the tool's usefulness.
- NBA player Charlie Villanueva was shamed into abandoning halftime tweets in March after his coach found fault with one that said he would step up in the second half.
- The San Diego Chargers fined cornerback Antonio Cromartie \$2,500 last month for a tongue-in-cheek post about what he called the team's "nasty" food at training camp.

Recruiting & Interviewing

- More than one in five employers search social networking sites to screen job candidates.
 - 33% find information which take the candidate out of consideration for a job
- 45% of employers said they already peruse social networks to screen candidates.
 - Only 11% used the technology in 2006.
- Tread lightly! This is an unknown area
 - Consumer Reports/Credit Reports

Is a “Google” search a consumer report?

- What you learn about an applicant from Google, MSN, or Yahoo may include information about the person’s “character, general reputation, personal characteristics, mode of living,” or even credit worthiness.
 - However, to be a “consumer report,” the information must be assembled by a “consumer reporting agency” that “regularly” prepares reports for a fee to employers. A search of a person’s name through an Internet search engine does not appear to meet this definition.
- But, there’s a risk:
 - You have no assurance that the information is about the person you want to check.
 - Even if it is, you have no assurance it is accurate.

Day-To-Day Management Issues

- There are legal risks associated with employees posting content on a blog or social networking site
- Need to protect proprietary information and sensitive employee information
- Need to protect your organization from litigation surrounding employee usage of social media tools -- at work and after hours
- There are risks of monitoring an employee's personal social media habits

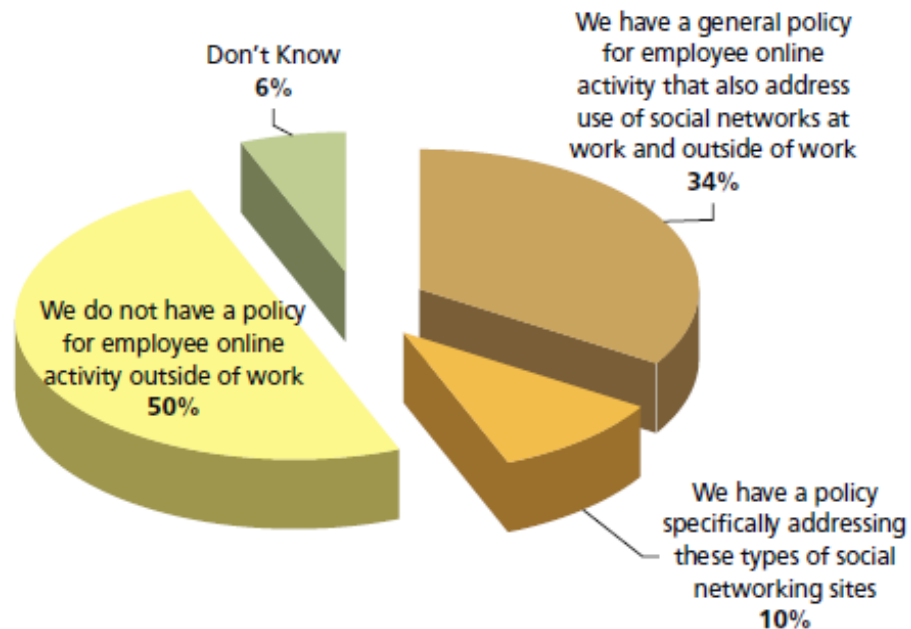


Techniques to Reduce Your Liability

- Ban access to social networking sites (in an extreme case--block all Internet connectivity).
- Allow employees unrestricted access, confident that they will only use it during their lunch break and they will not download material on to the network.
- Monitor and limit staff access to these types of sites, including general Internet browsing and downloading.

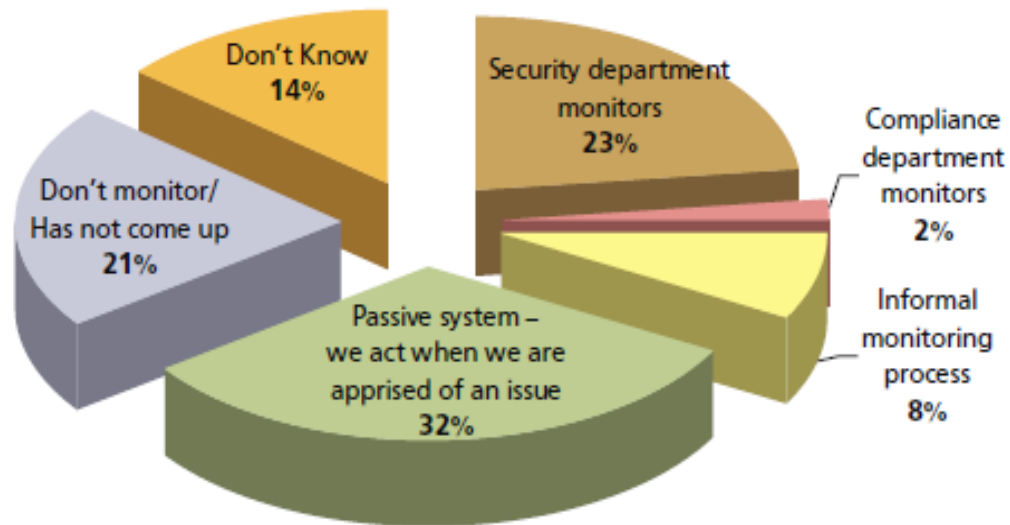
What Your Competitors Are Doing

Does your company have policies specifically addressing employee use of Facebook, Twitter, LinkedIn and other social networking sites?



What Your Competitors Are Doing

How is employee activity monitored on Facebook, Twitter, LinkedIn and other social network sites?



Can You Do It Vs. Should You Do It

Five Things to Consider for your Social Media Guidelines for Employees

- How does the use of social media affect employee productivity? Do you want employees accessing social media sites at work for either personal or business relations?
- What legal issues do your company face regarding proper disclosure and/or advice?
 - Small print exists for a reason, and it's usually not contained within 140 characters.
- What restrictions should employees have when interacting?
 - Like it or not, they will be perceived as a representative.
- How will you train them on the use of these social media guidelines?
 - It's one thing to establish guidelines, but they're failing if employees do not understand, or know, about them.
- What will the repercussions be for violations? Are you willing to enforce them?

Adapting to the new digital media

- Social networking presents new issues for the workplace
- It's no longer sufficient to rely on an old e-mail policy.
 - Your approach to drafting a policy depends on the benefits, risks, and needs of your company.
 - While some businesses will ban access to all social networking sites, others may find that it's advantageous to allow employees access to certain sites or even to create a company webpage on a social networking site.
- Tailor policies to fit your needs.
 - Consider is how to regulate what an employee writes about your company on his profile page or blog.
 - Some companies have instituted policies requiring employees to identify themselves when discussing the company in any public forum (including online forums) to notify readers that they are speaking in an individual capacity, not as a company representative.
 - Other companies impose strict discipline on employees who post anything about their employer or coworkers.

Easiest Way of Managing

- Bans blogging and using social media at the office unless required as part of an employee's job.
- State employees are personally liable for what they write and are precluded, in part, from sharing sales numbers and proprietary information or using the company logo without permission.

What Your Policy Should Include/Exclude

- You may want to prohibit some or all of the following:
 - disclosing confidential or proprietary information;
 - disclosing the name of the business in personal websites or purely social networking sites except professional networking sites (*e.g.*, LinkedIn);
 - revealing the name of the company on a site with sexual or violent content;
 - using the company's intellectual property (*e.g.*, trademarks);
 - infringing on the intellectual property rights of others;
 - making statements adversely affecting the company's interests or reputation;
 - criticizing customers or other important business partners;
 - making statements supporting competitors;
 - issuing defamatory, harassing, or disparaging language;
 - issuing content that violates the law (*e.g.*, obscenity); and
 - writing or commenting on content that would constitute a violation of any other policies, rules, standards of conduct, or requirements applicable to employees.

IBM's Social Media Policy

- Know and follow IBM's Business Conduct Guidelines.
- IBMers are personally responsible for the content they publish
- Identify yourself—name and, when relevant, role at IBM—when you discuss IBM or IBM-related matters.
 - And write in the first person.
 - Make it clear that you are speaking for yourself and not on behalf of IBM.
- Use a disclaimer such as this:
 - "The postings on this site are my own and don't necessarily represent IBM's positions, strategies or opinions."
- Respect copyright, fair use and financial disclosure laws.
- Don't provide IBM's or another's confidential or other proprietary information.

IBM Social Media Policy, cont.

- Don't cite or reference clients, partners or suppliers without their approval.
- Respect your audience.
- Don't pick fights and be the first to correct your own mistakes.
- IBM supports open dialogue and the exchange of ideas.
- IBM trusts—and expects—IBMers to exercise personal responsibility whenever they participate in social media.
- Know the IBM Business Conduct Guidelines.
- Be who you are.
- Be thoughtful about how you present yourself in online social networks.
- Speak in the first person.
- Don't forget your day job.

Employee privacy

- There is no such thing as free speech in the workplace
- Businesses have the right to monitor e-mails and internet usage of employees at work
- Both items should be clearly communicated in your employee handbook

Surveillance and monitoring

- Video monitoring is a very dicey issues
 - If employees handle cash, generally OK
 - Consult your labor attorney
- Monitoring of e-mails/internet access acceptable

Email use and abuse

- E-mail from company e-mail address should be for business use only.
- Examples of problems:
 - Chevron Corp. in 1995 was ordered to pay female employees \$2.2 million to settle a sexual harassment lawsuit stemming from inappropriate E-mail circulated by male employees.
 - The offenders' E-mail messages included, among other gems, *25 Reasons Why Beer is Better Than Women*.
 - Xerox fired more than 40 employees for idling away up to eight hours a day on X-rated sites.
 - Dow Chemical fired 64 workers and disciplined 230 more for violating the company's policies against pornographic E-mail.
 - The New York Times Company fired nearly two dozen employees and reprimanded another 20 workers for sending and/or receiving E-mails that included sexual images and offensive jokes.

Bottom Line

- Whether your company uses social networking sites or not, you need to be aware that your employees are unquestionably using them.
- Reexamine your electronic communications policies to protect your confidential information, reputation, and trade secrets and ensure that you've addressed social networking sites and blogs.
 - That will help protect you against liability and litigation (from both outside and within your organization) resulting from an employee's Internet postings.

Thank You

RSJ/SWENSON

15821 Ventura Blvd. #490

Encino, CA 91436

818.461.1874

8989 W. Flamingo Road

Las Vegas, NV 89147

702.688.4002

www.rsjswenson.com

