

Suffering from Social Media Overload? Learn How to Cure Your Viral Workplace

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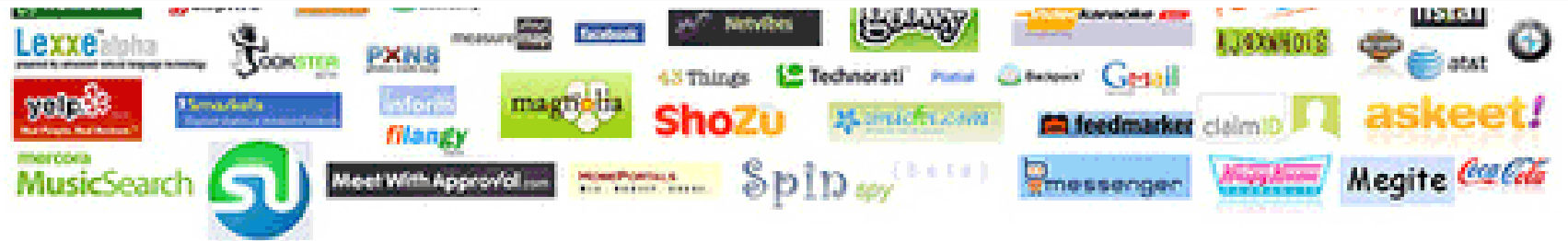
A Quick, Cliché Poll:

- Who has a social media account or profile?
- Tweeted, Facebooked, Googled, Buzzed, Updated, Commented, Liked, Poked, Linked, Ranted, Blogged, Grippped, Opined, Posted, or Shared?
- Anyone comfortable sharing with everyone here?



What is Social Media?

A type of online media where information is uploaded primarily through user submission. **Web surfers are no longer simply consumers of content, but active content publishers.** Many different forms of social media exist including more established formats like Forum and Blogs, and newer formats like Wikis, podcasts, Social Networking, image and video sharing, and virtual reality.



Everyone's Doing it . . .

- Social media accounts for **16 minutes** out of every **1 hour** spent online.
- Instagram acquired a user base of **4.25 Million** in only **7 months** – **42 Million** photos posted every **day**.
- Businesses are paying **Twitter \$120,000** to **sponsor** or **trend** an **account** or **topic**.
- **Facebook** has over **1.1 Billion** users and **Google** handles over **100 Billion queries** per **month (37K / sec.)**
- Every **two** days there is **more information** created than between the **dawn** of **civilization** and **2003**.

. . . And Employees Too

- Network Box reported that **7 out of 100 URLs** accessed by businesses were directed to **Facebook** and **10%** of Internet **bandwidth** went to **YouTube**.
- One study determined that **Facebook costs employers \$28 Billion** per year in productivity-loss . . . **“Cyberloafing”** is now a thing and a concern.
- A research by Convergys Corp. has shown that **one negative customer review** on YouTube, Twitter, or Facebook can **cost** a company about **30 customers**.

How do Employers Respond?

- **Denial**
 - Ignore it and it will all go away
- **Total control**
 - Block all uses by employees
- **No Control**
 - Allow everything to be used
- **No Compliance**
 - A detailed lengthy policy that no one reads or follows
- **Embrace**
 - Train
 - Official Sites for Company
 - Fit & mold social media for you, for your company



Some Oldies But Goodies

Just because you found it online, doesn't mean it can be used:

- ADEA
- ADA
- PDA
- Title VII
- FLSA
- FMLA
- Uniformed Services
Employment &
Reemployment Rights
Act



Not So New Laws with Some New Tricks

First & Fourth Amendments

National Labor Relations Act

Stored Communications Act

FTC Guidelines on Advertising

Wiretap Act

Whistleblower Protections

Section 1030 CFAA

Ethical Considerations



New Laws & New Tricks

- Maryland Senate Bill 433 & House Bill 964
- Tennessee's Legislative Efforts

The Nosy Nun

Facts:

A fiendishly clever Nun guesses an Employee's G-mail password & accesses his personal account! Nun then terminates Employee.

Result:

Violation of the Stored Communications Act. *Fisher v. Mount Olive Lutheran Church, Inc.*, 207 F. Supp. 2d 914 (W.D. Wis. 2002).

The Pregnancy Proclamation

Facts: Supervisor “likes” Employee’s Facebook Post: “I love my boss, my job, & I’m pregnant!” Next day Supervisor terminates Employee.

Result: Supervisor will soon be defending a Pregnancy Discrimination Act claim.

The All-Seeing Supervisor

Facts: Supervisor installs GPS tracking devices on company vehicles. Terminates Employee based on results.

Result: GPS tracking presents little problems for now. *Jones & Location Privacy Protection Act.*

The Drunken Pirate

Facts: University warns about postings on social media, then denies teaching certificate because of MySpace photo.

Result: No problem. “Drunken Pirate you were ‘warned.’” *Snyder v. Millersville Univ.*, 2008 WL 5093140 (E.D. Pa. 2008).



A Sympathetic Supervisor

Facts: Following termination for poor performance, sympathetic supervisor recommends former employee on LinkedIn.

Result: We could have a problem.

The Food Critic Employee

Facts:

Sales employee terminated after posting: “Sales event food: wieners and stale chips! Sucked! Miniature apples & caramel were good.”

Result:

Could be protected “concerted activity” because “food” relates to Employee’s earnings. *Knauz BMW*, NLRB Case No. 13-CA-46452.

The “Wonderful” Employee

Facts: B.D. Employee anonymously posts on a product review site: “B.D.’s Power Points are the most reliable. I only buy B.D.!!”

Result: Failure to disclose “material connection” could violate new FTC Guidelines on Advertising, B.D. could be liable.

The Ingenious Interviewer

Facts: Male Manager creates female Facebook account to view male applicant's profile.

Result: Could lead to a criminal violation of Section 1030 of the CFAA. Male Manager "exceeded" Facebook's terms of use: the little "I agree" box.

The Mischievous Manager

Facts: Manager “strong-arms” Employee for username & password to Employee-run “gripe site” with “let the sh*t talking begin” motto. The talking began, & the Employees were terminated.

Result: Federal jury verdict for Employees, violation of the Stored Comms. Act. *Pietrylo v. Hillston Rest. Group.*, Case No. 06-5754 (D.N.J. 2009).

The Suing Employer

Facts: A group of Employees are sued by their former Employer after posting about their bosses and work conditions. Employer sued for defamation.

Result: \$775,000.00 jury verdict for **EMPLOYER** and. . .an **Injunction.**

The Timely Tweeter

Facts:

Following interview, Employee Tweets: “Cisco just offered me a job! Now I have to weigh the utility of a fatty paycheck against the daily commute to San Jose and hating the work!”

Result:

Cisco Manager Tweeted Back: “Who is the hiring manager? I’m sure they would love to know that you will hate the work. **We here at Cisco are versed in the web.**”

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