

# #OMG – What to do When Your Workplace Goes Viral – Social Media for Today’s Employers

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# What is Social Media?

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**Web surfers are no longer simply consumers of content, but active content publishers.**



## Everyone's Doing it . . .

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- 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

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- 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?

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- **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

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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

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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

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- Maryland Senate Bill 433 & House Bill 964
- Mississippi: Proposed a similar bill, **House Bill 165**. The bill failed in committee.
- Mississippi **Cyberbullying Laws**: Miss. Code Sections 97-45-15; 97-45-17; 97-45-33; and 97-29-45

## The Nosy Nun

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### **Facts:**

A fiendishly clever Nun guesses an Employee's GMail 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

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**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

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**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

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**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

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

**Result:** We could have a problem.

## The Food Critic Employee

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**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

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**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

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**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

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**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

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**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

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**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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