

# Social Media in the Workplace – OMG!

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EXPAND YOUR EXPECTATIONS<sup>SM</sup>

# Roadmap

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- Latest News
- Legal Issues
- National Labor Relations Act
- Human Resource Issues
- Social Media Policy
- Benefits of Social Media



# What is Social Media?

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## Social Media Explained



I like donuts.



I just ate 3 donuts.



Here I am eating a donut.



My skills include donut eating.



This is where I eat donuts.



Here's a donut recipe..



Donut Lovers of NYC



75% off your next donut



I'm a Google employee who eats donuts.

# Statistics

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- 4.8 billion mobile users, 4.2 billion people with a toothbrush



845 million monthly users, 250 million photos are uploaded every day, 2.7 billion “likes” per day



465 million accounts, 175 million tweets a day, USA has 107 million members



2 new members join every second, USA has 57 million members, LinkedIn is the 36<sup>th</sup> most visited website in the world



2 billion views per day, over 829,000 videos uploaded each day

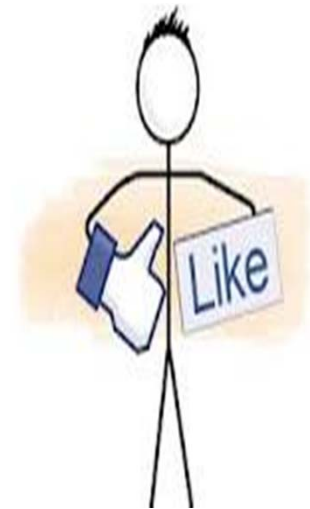


10.4 million registered users, most users are female, drives referral traffic to retailers

# Latest News

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- Facebook “likes” are not free speech
  - *Bland v. Roberts* - A Virginia federal judge held that Facebook “likes” are not constitutionally protected speech, nixing a lawsuit brought by workers who claimed the sheriff fired them for supporting his opponent. The termed workers alleged that they had engaged in a constitutionally protected activity by liking the opponent’s Facebook page. The Judge ruled that clicking on “like” is not protected speech.



## Latest News (cont.)

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- British Judge says legal claims can be served through Facebook
  - Lawyers for the plaintiff were unable to track down the defendant in order to serve him. Plaintiff's attorneys applied for permission to send Defendant the legal claim through Facebook. Plaintiff's counsel informed the judge that the Defendant had recently added two new friends. Defendant was given extra time to respond to the claim to allow for the possibility that he wasn't accessing his account regularly.
- Service through Facebook also exists in Austria, New Zealand, and Canada.

## Latest News (cont.)

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- Social Security Administration has told its disability-claims judges not to seek out information from websites because (1) reviewers cannot trust information posted online and (2) the act of typing in queries could compromise protected private information.
- Opponents of the new policy argue that the Internet has been used as a valuable anti-fraud weapon.
- Social Security's ban covers all internet sites, including social media like Facebook.

## Latest News (cont.)

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- Juror booted for “friending” defendant
  - Social media continues to pose problems for courts across the county, as a Florida man was kicked off a civil trial jury after trying to friend the defendant on Facebook. The juror’s response was that “he accidentally friend requested her.” In this case, the juror was dismissed after a scolding from the judge.



# Employers Requesting Social Media Passwords

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- Maryland - 1<sup>st</sup> state to pass legislation banning employers from asking employees and job applicants for their social media passwords
- Illinois, New Jersey, California, Delaware, Massachusetts, Michigan, Minnesota, New York, South Carolina, Washington have proposed similar legislation
- Connecticut and NY – state senators have called for federal agencies to investigate employers' request for passwords
- Password Protection Act – proposed federal legislation
- Facebook has issued a statement condemning this practice



# Legal Issues Associated with Social Media

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- Employers Requesting Social Media Passwords
  - Legal claims resulting from information obtained by mandatory Facebook search.
  - Areas to watch include *Race, Age, Religion, Marital Status, Sexual Preference, Pregnancy Status or Disability.*
  - Employers held accountable for the information they gather as well as the information they miss.
  - Invasion of privacy claims.



## Legal Issues Associated with Social Media (cont.)

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- Wage & Hour Concerns
  - Are employees encouraged to promote the company on Social Media?
  - Time spent promoting the employer's product or service through social media sites is most likely compensable "working time" under FLSA and applicable state/local wage and hour laws.
  - Employers should require employees who blog or maintain a social networking site as part of their job and who are not exempt to record time spent "working" on the blog or site.



## Legal Issues Associated with Social Media (cont.)

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- Non-Competes & Non-Solicitation
  - Former employee starts friending all of your customers on Facebook.
  - Employers may require former employees to unlink and defriend their LinkedIn, Facebook, and other social network contacts connected with the company.
    - *Amway Global v. Woodward* – A blog post was evidence of violation of a non-solicitation.
    - *Sasqua Group v. Courtney* – Since company's customer information was available on LinkedIn and other public sources it was not a trade secret.

## Legal Issues Associated with Social Media (cont.)

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- Confidentiality & Privacy
  - Social Media enhances the possibility that confidential information and trade secrets may be disclosed.
  - Example: North Carolina Domino's Pizza Video

## Legal Issues Associated with Social Media (cont.)

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- Advertising and Brand Management
  - By identifying oneself as an employee, a social networker becomes a representative of the company.
  - Employee's posts reflect on the company and its image.
  - Companies need to make sure that employees are not posting unauthorized statements, endorsements or product claims.



## NLRA

- Employers may not prohibit employees from engaging in protected concerted activities and/or union activities protected by the NLRA.
- Employees' comments are protected when they are made with or on behalf of other employees or where they discuss or seek to induce group action by employees.
- Employees are engaged in protected concerted activity when they are expressing a concern regarding terms and conditions of employment (including actions of supervisors) on behalf of co-workers, in concert with co-workers, or on a matter of common concern to co-workers.

NLRB

# NLRA – Examples of Protected Postings

## Not Safe for Work?

Examples of Facebook postings that were deemed protected by labor law by NLRB lawyers, and others that weren't.



### 'Scumbag'

A paramedic was fired after calling her supervisor a 'scumbag' on Facebook from her home computer.

**NLRB'S POSITION:**  
Employee was wrongfully fired

**OUTCOME:**  
Case settled just before trial



### 'Setting it off'

A Frito-Lay warehouse employee was fired after writing on Facebook he was 'a hair away from setting it off in that b—,' apparently referring to the warehouse.

**NLRB'S POSITION:**  
Employee was not wrongfully fired

**OUTCOME:**  
Employee's lawyer has appealed



### 'Rednecks'

A bartender was fired for communications on Facebook with a relative in which he called customers 'rednecks' and said he hoped they choked on glass.

**NLRB'S POSITION:**  
Employee was not wrongfully fired

**OUTCOME:**  
NLRB didn't file a complaint



Source: National Labor Relations Board



# Human Resources Issues Associated with Social Media

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- Employee Website Monitoring
  - Ensure that employment decisions are made with accurate information.
- Supervisors “friending” subordinate employees
  - *Peer v. F5 Networks, Inc.* = Facebook friendship between an employee and her supervisor lead to a claim of disability discrimination.



# Human Resources Issues Associated with Social Media (cont.)

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- To Allow or Prevent Social Media Access at Work
  - Employee Productivity
- Social Media Addiction
  - Bergen Facebook Addiction Scale = was generated from a study showing that symptoms of Facebook addiction resemble those of drug and alcohol addiction.
  - Facebook Addiction Disorder (FAD)



# Social Media Policy

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- At a minimum, a good social media policy should include:
  - Prohibition on comments about co-workers or supervisors or the Employer that are vulgar, obscene, threatening, intimidating, harassing, or a violation of the Employer's workplace policies against discrimination or harassment.
  - Requirement that the employee use a disclaimer when an employee is expressing his or her views and has identified himself as an employee of the company.
  - Prohibition on uses of social media that disclose proprietary or confidential information belonging to the company.
- Remember your social media policy violates the NLRA where it is so ambiguous that an employee could reasonably construe it as prohibiting activity protected by the NLRA.

# Benefits of Social Media

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- Why are companies using Social Media?
  - Build brand
  - Gain insight into customers and industry
  - Promote services
  - Increase traffic to Web site
  - Bring in new business
  - Crisis control



## Benefits of Social Media (cont.)

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- OHL

**“More companies are discovering that an uber-connected workplace is not just about implementing a new set of tools – it is also about embracing a cultural shift to create an open environment where employees are encouraged to share, innovate and collaborate virtually.”**

**– Karie Willyerd & Jeanne C. Meister, [HarvardBusiness.org](http://HarvardBusiness.org)**

**“Businesses used to have a small suggestion box near the door that mostly housed dust bunnies and an occasional piece of gum. Rarely would someone get back to you. But people can now make a post from an iPhone or a BlackBerry while they’re sitting in your restaurant.”**

**– Charles Nelson, President of Sprinkles Cupcakes**

Questions?

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