

Tweet Talk-Avoiding the Twitter Jitters

Employers must deal with the complex of new opportunities and headaches arising from this new social media

First came blogs. Then Facebook. And now Twitter. Although these communications and networking tools were once used mainly by individuals for personal purposes, they are increasingly used by companies. Dell and Chevron sponsor public blogs. Law firms have joined the action by using blogs and creating Facebook pages. Large, national companies such as McDonald's and Google have created corporate Twitter accounts. These tools appeal to companies because they permit the companies to communicate with their employees, customers and other constituencies in a direct, informal and participatory way. At the same time, corporate sponsored blogs, Facebook pages and Twitter accounts pose significant legal risks. Companies that anticipate these issues and plan accordingly can reap the benefits of these new forms of communication while reducing the risk of litigation. Among the legal issues raised by blogs, Facebook and Twitter are:

1. **Defamation and Privacy Torts and Intellectual Property Infringement.** Companies may face liability if their employees post content to the corporate blog, Facebook page or Twitter account that defames or invades the privacy of third parties. Posts that include a third party's intellectual property, such as copyrighted material or trademarks, may expose the company to liability for infringement. As an example, baseball manager Tony La Russa recently filed a complaint in the Superior Court of San Francisco alleging that the twitter.com/Tony La Russa site contained unauthorized photographs of him and written statements made by La Russa when in fact they were not. Based on this, La Russa contends that Twitter is liable for trademark infringement, false designation of origin, trademark dilution and cybersquatting among other claims.
2. **Trade Libel.** False or misleading statements made either through a company blog, Facebook or Twitter account about the goods or services of a competitor that cause or are likely to cause the competitor harm may be grounds for trade libel action.
3. **Trade Secrets-**Inadvertent disclosure through a company blog, Facebook page or Twitter account of company trade secrets can easily destroy the "secret" status of such information, rendering it ineligible for trade secret protection and could expose the company to liability for trade secret misappropriation.
4. **Employment issues-**Companies may take appropriate action in connection with employees who spend excessive work time on personal blogs, Facebook or Twitter or who engage in conduct that is harassing, discriminatory or potentially violent on those sites.

Practical Guide for Management

To minimize the risks, companies should carefully consider their strategy with respect to these novel forms of communication and take proactive steps to minimize potential exposure. Such steps may include:

- > Creating a written policy for employees that sets out clear guidelines for using communication and networking tools to raise awareness about possible pitfalls. Companies may wish to have separate guidelines for employee's discussion of the company in their personal blogs, Facebook pages and Twitter Accounts.
- > Establishing terms of use and posting appropriate disclaimers that limit the company's liability for third-party statements and other claims.
- > Regularly monitor the communications for content that violates terms of use, employee policies or applicable laws. Surveying company communications practices periodically and conducting training or information campaigns regarding what social networking practices will be supported and those that will be considered unacceptable.
- > Taking the steps required to qualify for the safe harbors available under the Digital Millennium Copyright Act.
- > Ensuring that any personal information gathered from users via the corporate blog, Facebook page or Twitter account is handled in compliance with applicable privacy laws and the applicable privacy policy.
- > Archiving communications content in well-organized and readily available form.

As social media tools become more and more common, you realistically cannot expect your employees not to use them outside of work (or at work, in reality). Of all the policies, the above guidelines are most likely to be covered by your existing employee guidelines. In addition to those existing guidelines, companies need to enact social media guidelines which cover the following areas such as boundaries, transparency, confidentiality, financials, consequences and work use.

Twittering and tweeting are new and exciting tools in the dawning age of social media, but lest not forget that such twittering could leave you twirling in your own tweeting if proper precautions are not enacted.