

# Taming the WILD WEST of Social Media: Tips For Employers



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**Imagine** that you're the owner of a small marketing company. You know that it's hard to ignore the world of social media in today's business environment. The owner heard more companies are using or planning to use social media to search for employees. Facebook alone has over 400 million users. YouTube reportedly will serve up over 75 billion videos to 375 million viewers in a year. Various surveys state some 35 percent of adults use some social networking sites, and social

networking beats personal e-mail as a more popular online activity. And now Google has joined the fray with Google Buzz. There can be no dispute that social media networking is an incredibly powerful marketing tool and you are doing your best to take advantage of it. Therefore, you use all available online media to market your clients' companies as well as your own—YouTube, Facebook, Twitter, LinkedIn, MySpace and, now, Google Buzz.

Now imagine that one day one of your employees comes into your office and shows you a print-out of another employee's Facebook profile page. The employee tells you that she found the photo by searching your company's name. She further tells you that she also located the profile photo through a search of the Fans of one of your clients' pages, which your company set up and manages. You are shocked by what you see because what you see is your new, hotshot, twenty-something marketing wiz standing before the camera dressed only in a gold bikini swimsuit with a cape around his shoulders. He wears sunglasses and a crown on his head. Around his neck is draped a sign that reads, "Jesus." Usually not at a loss for words, you are.

Such is the world of social media. On the one hand, it is a remarkable, efficient and inexpensive way to let the world know you exist and to advertise what you do. Social networking allows a company to tap into the fact that the average Facebook user has 130 friends and spends 55 minutes a day on the site. For as little as pennies per click through, you can create an ad that is specifically targeted at your market audience using the demographic information obtained by the social networking site. For less than \$1,500, your ad can be seen millions of times. Simply: Everybody is doing it, everybody is there and it is the place to be.

On the other hand social networking is a virtual Wild West, where the line between the professional and the personal is blurred if not completely obliterated. It is a place where the business owners and managers interested in serious marketing meet the casual, the weird and the truly outrageous, such as the bikini-clad marketing wiz in the photo described above, which is by the way an accurate description of a real photo discovered by searching the fan base of a real company.

All hope is not lost however. There are ways to impose some control over the so-called Wild West.

### 1. Create Policies That Make Sense and Enforce Them

By now, most employers have electronic use policies that control their employees' use of the Internet and electronic mail on the employers' computer systems. Employers are less apt, however, to have policies that address their employees' use of social networking media in a manner that implicates employers. It is advisable to create and implement a social networking policy that encourages the responsible use of social media or professional purposes and at the same time warns employees that they can be disciplined for online activities that adversely impact the employer's business.

*An appropriate social networking policy should do the following:*

Inform employees that the employer's sexual harassment, discrimination and

other workplace policies apply to behavior on the Internet

Prohibit employees from disclosing confidential business information and trade secrets

Prohibit defamatory or disparaging remarks about the employer's company or a competitor's products or services. Some employers, such as public employers, need to be cautious about infringing on a public employee's First Amendment rights

Prohibit the display of unprofessional behavior that reflects poorly on your company

Encourage employees to be truthful, respectful and professional

Advise employees that they should seek to ensure that they are representing the best interests of their employer and should not act in a manner inconsistent with the employer's expectations of employee loyalty and commitment

Remind employees that regardless of whether the employee identifies him or herself as your employee, the employee should ensure that his or her social media profile and related content is consistent with how he or she wishes to present him or herself to colleagues and customers

Unless the state in which the employer operates has laws protecting an employee's off-duty activity, the employer may discipline an employee for violating its social media policy. In the case of the bikini-clad marketing wiz, if counseling the employee to change his picture does not work, barring a state law that protects the employee specifically, the employee can be disciplined and/or terminated. After all, the employee presented himself to the world—everybody can see his profile picture—in a way that is inconsistent with your business image, he identified himself as your employee, and he caused his photo to appear in the fan base of one of your clients, whose Facebook page your company manages.

Later this year, in the case of *Quon v. Arch Wireless Operating Co.*, 529 F.3d 892 (9th Cir. 2008), the United States Supreme Court will decide whether public employees have a reasonable expectation of privacy in their personal use of their employer-provided pagers. Even if the Court decides that the employees did have a reasonable expectation of privacy, however, the bikini-clad marketing wiz would not have a reasonable expectation of privacy in a photo that the whole world can see by searching your company and your client's company on Facebook. As with all policies, a social media policy will not provide much protection if it is not enforced appropriately and consistently.

### 2. Educate Your Employees

In addition to warning employees, it would behoove employers to educate employees about the best way to use social networking in a responsible and productive way. Whether that training is developed with the assistance of a tech-savvy employee or through an outside consultant, edu-

cation and regular reminders are keys to the successful use of social media and the avoidance of problematic behavior. It is important to reject the false assumption that people "know better by now." As lawyers, we are consistently and constantly amazed at what people write in electronic communication and on the Internet. Depending on what side we are on, we either cringe or we celebrate.

*Here are a few bits of information to impart to employees:*

At a minimum, employees should be educated about the ability to control privacy settings to prevent viewing of their site content by people whom they would prefer not see it. For example, Facebook allows a person to control, among other things, who can comment on the person's posts. Facebook also allows a person to customize among their "Friends" who can see what content.

Employees should be advised to share their photos, including their profile photo, wisely. While a formal headshot can be considered geeky, an old college photo capturing a bong hit is entirely out of bounds.

Employees should be cautioned against the taking of quizzes to discover which president or member of the Brady Bunch they are most like, which is accompanied often by the unrestrained posting of the results and other links. Such postings can be not only annoying to the recipients, they can also be counterproductive to the creation of an image you hope your employee will seek to foster. In other words, the repetitive taking of silly quizzes and the constant posting of the results while seemingly fun can lead the recipient of the posts to conclude that the person is not somebody to be taken seriously and not somebody the recipient would pay money to handle important business. As with so many things in life, moderation and thought before action is important.

Employees should be careful about the information they use to populate their profiles. If an employee wants their personal life to be personal, they should lock down their privacy settings and not identify whom they work for in their profile. If an employee is an executive vice president of a company, he should probably not list DC Comics as his favorite literature given the professional image he needs to portray to the public.

### 3. Don't Friend Everybody

In a recent survey, two-thirds of 600 employees polled stated that they thought that their colleagues share too much information on Facebook. Even with appropriate policies and proper education, we are all human and mistakes can be made. Even an innocent post can result in unfortunate results because while people can control the content of their posts, they do not have the same level of control over others who might comment on their posts. Therefore, it is advisable for employers to prevent managers from being social networking friends with supervised employees. For some reason, people who do not or would not socialize in the real world socialize without restraint in the virtual world. Such socializing can compromise the level

of respect and the line of authority that must exist for business to be productive. Although many leadership models foster contributions from all employees and strive for consensus building, there are times when somebody has to just be the boss. Even when people are careful, the kind of information that gets shared online can seriously interfere with the ability to be the boss when it is necessary. Simply put, it is better to be safe than sorry.

**4. Be Careful About Checking Social Media for Applicants**

Many employers are regularly checking the Internet to see whom they might employ. An employer should probably not use the Internet to check out every applicant. Rather, employers should reserve the use of the Internet for a final check on the person or small group of people the employer intends to hire—any such search should be done with the applicant’s knowledge. Searching the Internet, including social media sites, for applicants can provide information about an applicant that the employer should not know, such as the applicant’s race or sexual orientation. The bikini-clad marketing wiz in a tight job market might want to claim religious discrimination if he was not hired after somebody looked at his Facebook profile photo. On the other hand, an employer who neglects to conduct such a search runs the risk of a negligent hiring claim if the Internet search—which is a simple search—would have revealed information such as that your new employee, who assaults a minority customer, had a propensity for racist violence.

**5. Never Forget That What One Writes is Written**

Despite lawyers and HR professionals constantly reminding employees about the hazards of electronic communication, employees at every level of any company continue to use electronic communication like they are using the telephone or speaking directly to another person. They continue to ignore the fact that they are creating a written record of their communication. HR professionals must continue to remind people, including other HR professionals, that their written electronic communication does not lose its memory, does not get erased and can be sent in the blink of an eye around the world, or at least to every other employee in the company, the newspapers and a plaintiff’s attorney.

In summary, there is an inherent tension between the use of an Internet tool by individuals and businesses that wish to advance their professional life and the use of that same tool by individuals to celebrate and share their personal life. The melding of the professional and the personal is one reason that Internet tools have been so successful. The lack of restraint and discretion on the personal side, however, undermines the Internet tools’ value for the professional side. It is not necessary to abandon one for the other if people can be mindful of what they are doing. With proper forethought and caution, we believe that is possible to use the Internet tools in a way to make both the professional and personal life successful. ■

ABOUT THE AUTHORS



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