

## Social Networking Media – The Great Communicator?

**As companies expand their markets through social networks, and employees “tweet” at work, employers should be mindful of legal and practical concerns.**

**Now is a good time to integrate social media guidelines into company employment policies.**

Facebook®, Twitter® and other social networking tools are becoming mainstream methods of communication. Once shunned as the exclusive purview of the younger generation, businesses, entertainers and even revolutionaries are beginning to use these media to market, amuse or expeditiously communicate to a large audience (witness the role of Twitter® in the recent protests in Iran). Many businesses see these networks as a boon to their targeted advertising efforts but for a nominal cost.

As companies begin to expand their markets through social networks, and employees take time at work to use social networks, employers should be mindful of legal and practical concerns. You can't assume that company business is not making its way into “tweets” or onto employees' personal Facebook® profiles. Now is a good time to integrate a Social Media Policy into a company's employment, intellectual property, proprietary information and other office rules and policies.

The following are some considerations for a Social Media Policy:

### ***Extent of Permitted Activity***

Companies should determine whether to permit social networking while on the job, and if so, whether to restrict such activities to certain times during the day. The tenor and specifics of the

policy should reflect the culture of the work place. Because on-line postings may be viewed not only by friends but by co-workers, customers, and the world at large, employees may need to be reminded of appropriate on-line etiquette and content. The policy should specify, for example, who can speak on behalf of the Company, and who may register the Company's trademarks as user names.

### ***Applicability***

Many states prohibit employers from disciplining employees for legal, off duty activities. To avoid running afoul of these laws, a social networking policy should target behavior and communications that directly relate to an employee's job responsibilities or to the company's broader obligations to its customers, clients, or other constituencies.

### ***Industry Laws***

Consider how laws specific to your industry might impact postings by your employees and remind them of their obligation under those and other applicable laws. For example, public companies may want to remind employees that black-out periods apply to on-line postings, just as they do to other forms of communication. Hospitals and other health care providers may want to stress the importance of patient confidentiality in all external communications. And companies working on new products

**Each work place and every industry has its own special issues.**

**Please contact one of the following Vorys attorneys for more detailed information and policy suggestions:**

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should emphasize the importance of keeping trade secrets secret.

### ***Union Issues***

If you wish to apply the Policy to organized employees, you should consult an employment lawyer to determine whether the Policy must be negotiated through collective bargaining. And if you currently have no unionized employees, be aware that federal law places limitations on how and if you can take action against employees who collectively complain about, or seek changes to, company policies and work conditions.

### ***Monitoring for IP Infringers***

The Company should monitor social networking sites for potential user name squatters, impostors and trademark, copyright infringers and misappropriators of trade secrets and take prompt and appropriate action.

### ***Monitoring Employees as an Option, but not an Obligation***

To avoid liability for taking down postings, and possibly violating federal or state employment law, the Policy should state that the Company reserves the right to monitor employees' postings, but is not obligated to do so. As a general rule, the Company should not "troll,"

monitor, or look for employee postings unless it has specific cause or need to do so. Once a violation comes to the Company's attention, however, the Company should handle it as it would any other information that merits investigation and attention.

### ***Lack of Privacy***

Remind employees that their company-provided email and most on-line postings about their places of employment are not private and should be published only after thought.

### ***Consequences of Violating the Policy***

Thought should be given to the consequences to employees who violate the Policy. Will there be an investigation, a right to a hearing, how will the decision regarding the consequences be made, and by whom? Potential consequences include: apologies to fellow employees, blocking of sites, discipline, discharge, etc. Warnings should accompany the Policy.

### ***Train Your Staff***

If you want to encourage use of social networks for the benefit of the Company, train your staff on best practices, examples and specific guidelines.

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This client alert is for general information purposes and should not be regarded as legal advice.