

social media policies in the workplace: a primer for employers¹

The use of social media in the workplace has taken off in recent years and employers are struggling to keep up. With easier accessibility to the internet, the popularity of smart phones and the introduction of new types of social media, it is not surprising that new legal issues are constantly emerging.

Over the last several years, employee conduct on social networking sites has been the subject of litigation across Canada. These decisions and recent events demonstrate the need for both employees and employers to understand how social networking fits into traditional employment and labour concepts. Social media policies need to be integrated into companies' existing policies on protection of privacy and confidential information, workplace safety, conduct in the workplace and discipline.

When creating a social media policy, there is no one-size-fits-all plan. Some companies use social media to brand themselves and expand market research, whereas others are simply trying to protect themselves from potential legal and security risks and control employee productivity. Regardless of the type of policy implemented, it is essential that the policy be well understood by

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employers and employees alike. Here are some tips on how to create an effective social media policy:

1. **Consult Broadly:** When drafting a social media policy, it is important to involve all departments. Information technology, human resources, public relations/marketing and corporate managers and executives should all work together to create a policy that works for everyone.
2. **Consider Scope:** Social media policies should be broad enough to cover social media technology that will be introduced in the future. Furthermore, the policy should not only cover the material on the company blog, or company Facebook or Twitter account, but should cover the appropriate use of one's personal blog, Facebook page, or Twitter account. It must also be clear that the policy is not restricted to use from work computers and applies to use of social networking sites on employee time.
3. **Strike a Balance:** Implement a positive social media policy. This will empower employees rather than leave them feeling restricted. Recognizing the pervasiveness of new technologies, allowing access to social media in moderation could be the answer so long as it does not affect productivity and the company is protected. Perhaps limiting access to specific sites or limiting social networking to the hours before work, after and during lunchtime might work for some employers.
4. **Inform Colleagues:** Educate employees on the legal and security risks involved in social networking and what they can do to protect themselves and the company. Emphasize the need to use caution and good judgment as comments posted on social networking sites can spread despite the original posting being removed. It is important to encourage employees, if mentioning the company name, to use a disclaimer that the opinions expressed are not those of the company.

5. **Specify Acceptable Use:** Clearly define what is and is not considered "acceptable use" both on the company's network and outside of it. It should be clear that company systems may not be used for illegal activity such as copyright/plagiarism and downloading pirated software.

6. **Address Consequences:** The policy and its enforcement should be clear to all employees. It is important to clarify what disciplinary action will be taken, up to and including termination, if policies are not followed.

7. **Document:** A social media policy should be written and it is a good idea to have employees sign off on it or track acceptance or receipt to ensure they have read its contents.

8. **Accessibility:** The policy should be simple and accessible. Employees will not be inclined to read through an overwhelming manual. Circulating the policy regularly and having the policy readily available both electronically and in hard copy is also suggested.

9. **Ongoing Review:** Create a long term plan for your company and include social media goals. This means re-evaluating your company's position every six months or so. This will enable your company to adapt to advancements in social networking.

With social networking sites becoming more prevalent as a forum of social interaction, the need for a social media policy cannot be understated. It is a delicate balance between restricting the employee's right to freedom of expression and protecting the employer. Employees are entitled to their opinions; however, displaying such opinions may negatively impact the employment relationship and the organization. Social media policies need to be clear that maligning the company or giving up trade secrets is subject to serious discipline. The employer must also be concerned about vicarious liability and ensuring that the views of

an employee are not mistaken for the views of their employer. It remains to be seen whether the emerging case law will change the workplace, social media use, or both. However, one thing is certain, companies that maintain an open dialogue with their employees about social networking are those that will be more likely successful in this marketplace.

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a cautionary note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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