

## Being Connected In A Social World

Once viewed with skepticism by the business community, social media has turned every company that wishes to remain competitive into a *media* company—and we are no exception. Our institution views social media as a powerful means to promote our values and to build our brand. Social media allows us to interact with our customers and to communicate with them about important developments and events. Sharing links to companies that we support also allows us to build productive and profitable business alliances.

Yet along with the unprecedented access and immediacy of communication afforded by social media come potential pitfalls. For example, online anonymity means that users do not have to be accountable for their words. There's a kind of "mob mentality" that sometimes takes over when people respond hastily to another's comments. And, posts on social media sites are public and permanent. They can be forwarded endlessly and read by a large and unfamiliar audience. If messages are read out of context, they may be misinterpreted.

Finally, there is the potential conflict between employees' rights to express themselves and an organization's need to preserve its reputation and interests. You may remember the crisis faced by Domino's Pizza when two employees posted a YouTube video of themselves doing disgusting things to a sandwich before it was to be delivered. The employees were fired and the company launched a massive campaign to restore its customers' trust.

### Social Media and Protected Speech

So, what kinds of social media activities are protected against employer retaliation in the U.S.? According to the National Labor Relations Act (NLRA), "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

The "concerted activity... for mutual aid or protection" provision applies whether or not a company has a union. Protected social media activities may include, for example, complaints and criticisms about a supervisor's attitude or performance, or about the terms or conditions of employment. But the line between protected and unprotected speech is not always clear, as the following cases illustrate.

The National Labor Relations Board, a government agency with authority under the NLRA to prevent unfair labor practices, found the following instances of employee firing for social media activity to be *illegal*:

- Calling a manager immature and saying that the company founder would roll over in her grave at the violations of workers' rights at the company.

- A group of workers grousing about a co-worker who intended to complain to management about their work performance.
- Making rude, disparaging remarks about a supervisor that spurred corroboration among co-workers.
- A group of workers complaining about being harassed by panhandlers while on the job.

On the other hand, the NLRB found the following firings to be *legal*:

- Making an offensive remark that was not a complaint about working conditions.
- Mocking a competitor.
- Insulting the company's customers.
- Complaining about one's own working conditions.
- Making disparaging remarks about a client.
- Criticizing the company on an elected official's Facebook page.

In general, social media activity is *not* protected if it does not seek to involve other employees, does not relate to shared conditions or terms of employment (e.g., comments that are mere griping or boasting) or is otherwise carried out in a reckless or malicious fashion.

## **Data Privacy Laws**

Data privacy laws also affect social media activities. New rules in Europe specify that all EU countries are subject to the same data protection laws, and companies outside the EU must abide by Europe's laws. The European Data Privacy Law seeks to protect consumers from the use of their personal data by social media companies. The law would prohibit Web tracking and profiling activities used in targeted advertising unless customers provide prior consent.

Meanwhile, the U.S.'s Electronic Communications Privacy Act (ECPA) was enacted back in 1986, at the very dawn of the digital communication age. The law protects personally identifiable information from disclosure and regulates when electronic communications can be intercepted, monitored or received by third parties. It is in need of reform to reflect the current technological environment, including addressing data that is stored in the cloud (this data is currently covered under some state laws but not others). Many states also have laws regulating an employer's actions against an employee for certain online behaviors outside the workplace.

## **Social Media Do's and Don'ts**

Our company relies on all employees to use social media responsibly, in order to preserve, promote and protect our individual and organizational welfare and reputation. To this end, the following guidelines may be helpful:

## Do's

- If you are expressing a *personal* opinion on social media, be sure to make it clear that you are speaking for yourself, not our company.
- Be truthful. False statements about others may be subject to libel action.
- If you discover that our institution is being unfairly or inaccurately represented on social media, contact the compliance department rather than trying to defend our company on your own.
- Take steps to ensure that all contractors, vendors, and agents that work with our company also understand and follow our social media policy.
- If you disagree with someone, do so politely and respectfully.
- If you have a vested interest in something you are discussing, disclose it.
- Make sure your online activities do not interfere with fulfilling your job requirements.
- Respect copyright, fair use and trademark laws.

## Don'ts

- Don't violate others' privacy by sharing information about them that they might not want to be shared, including audio recordings or images.
- Don't gossip. If you have an issue with someone, talk to him or her directly and in private, rather than making your conflict public.
- Don't share confidential information about co-workers, customers, or our company.
- Avoid making malicious, obscene, harassing or threatening posts, as well as insults based on race, sex, religion or other status. The same types of communications that are prohibited in the workplace are also prohibited on social media channels.
- Don't use social media channels to conduct confidential business with co-workers, customers, partners or suppliers.
- Don't post negative comments about our competitors—either under your own name or anonymously.

- Don't pay or otherwise reward bloggers or anyone else in exchange for endorsing our company, products or services.
- Don't use social media for covert advocacy, marketing or public relations.

As the global legal environment and our institution's social media policy continue to evolve, we will keep you updated. In the meantime, our company appreciates your ongoing efforts to demonstrate common sense and high integrity when online so that we can continue to maximize the extraordinary technological tools available to us all.