Everyone's Doing It: What Are You Going to Do About It?
Aka Social Networking 101 – 201

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Your kids are doing it; your friends are doing it; your co-workers are doing it; your employees are doing it; your CEO is doing it; you might even be doing it. What is "it"? "It" is some form of what is commonly referred to as "social networking." What is "social networking"? Simply put, it's communicating with millions of other people world-wide in various forms of electronic communication including blogging, Facebook, twitter, MySpace, YouTube, Wikipedia, etc.

Employers need to recognize that employees likely are engaging in social networking and possibly discussing the company's personnel, products, services and competitors; such activity also may be happening on paid work time and/or using company equipment. Understanding more about the workplace implications of social networking also includes consideration of whether it is necessary or appropriate to implement any guidelines, policies or procedures covering social networking. Any such guidelines and policies should be evaluated in light of the employer's existing policies concerning the use of company electronic communications systems such as e-mail, voice mail, Internet access, and those covering disclosure of confidential information, and conflicts of interest.

Types of Social Networking

- Blogs: Blog is short for weblog. Blogs either provide commentary on news or a particular subject, or serve as an online diary. There are hundreds of millions of blogs on the Internet, many updated every day.
- Facebook: Facebook started as an online tool for college and university students to connect with each other. It has since expanded to allow anyone over the age of 13 with a valid e-mail address to open a free account. Facebook is loosely organized into a variety of networks based on schools, location, employers, charities and other causes. Facebook connections are known as "friends." Facebook participants generally update their "friends" with short written blurbs about what they're doing as well as pictures, video and the like. Facebook reportedly has over 200 million registered users.
- LinkedIn: LinkedIn is an online network for professionals that allows people to search and connect via alma mater, location, employer or various user-created groups. LinkedIn reportedly has more than 41 million members.
- Twitter: Twitter is the latest "next big thing" in social networking. Known as "micro-blogging," "tweets" are text-based posts of up to 140 characters, displayed on the user's profile page and delivered to followers—other users who have subscribed.
- "Wikis" such as Wikipedia, a free, web-based multilingual encyclopedia project containing information written collaboratively by volunteers around the world; most all of its articles can be edited by anyone with access to the site. Arguably, it currently is the most popular general reference on the Internet.

Worldwide Phenomenon Impacting All Segments of Society and Types of Businesses/Employers

How many people currently are involved in social networking? Estimates vary, but study after study indicates that a significant segment of the population, including people who work for companies and organizations, engage in some form of social networking, and frequently, while at work or using employer-provided equipment whether it is via office computers or mobile devices. According to a March 2009 recent report from Nielsen Online, the time that Americans spend on social networking sites is up a staggering 83% from 2008.

How does this translate in the workplace? According to a recent survey conducted by Deloitte, 22% of employees say they use some form of social networking five or more times per week, and 15% admit they access social networking while at work for personal reasons.

This same study found that the percentage decreased as users got older, with only 43.1% of those ages 35 to 54, and 18.9% of users ages 55 and older visiting social networks. But these statistics also should be considered in the context of an overall major increase in social network traffic across all age groups in the last 12 months.

Twitter appears to be the most popular "new kid on the block," with total user minutes increasing a phenomenal 3,712% from 7,865 in April 2008 to 299,836 in April 2009 according to

Another study, produced by eMarketer report, shows that over 50% of users visited social network sites at least once per day.

The March 2009 Nielsen report also found that by the end of last year, social networking had overtaken e-mail in terms of worldwide reach. The report found that 66.8% of Internet users worldwide had accessed social networking or blogging sites, compared with 65.1% for e-mail. Furthermore, social networks and blogs now account for more than 67% of all online activity.

Compare this information to the results from a recent study conducted by a Boston IT advisory firm, Nucleus Research, which found that,
Nearly half of employees in the recent 'social net-working' study use Facebook during work hours some as much as two hours per day.

The average worker uses it for 15 minutes a day, and most couldn't come up with a legitimate "business reason" for logging on. This survey of 237 employees also showed that 77% of workers who have a Facebook account use it during work hours. Additionally, the study found that "some" employees use the social networking site as much as two hours a day at work.

In terms of productivity, the Nucleus Research study found that employees who have access to Facebook lose an average 1.5% in total worker productivity.

As reported by Gary Hamel, Wall Street Journal.Blogs, in "The Facebook Generation vs. the Fortune 500" (March 24, 2009), social networking is now so prevalent now that at some observers have taken to calling those who have grown up on line "Generation F", the Facebook Generation.

Cultural, Social and Political Impact of Social Networking

Employers who question whether social networking is simply a "fad" or a teenage phenomenon should understand that the cultural, social and political impact of social networking on every level of society throughout the world is undeniable. As jut one example, the recent election in Iran proved to be a springboard for Twitter to mature into a legitimate and important communication tool. According to Kevin Fayle, author of a legal technology blog called "Technologist", Twitter played such a prominent role in allowing mobilization and documentation of the Iranian opposition that the U.S. State Department at one point even asked the company to put off a scheduled maintenance so that Iranians could continue using the service. Mr. Fayle reported his June 25, 2009 blog that is that "despite the fact that the [Iranian] government has blocked the Twitter site, there are many websites that utilize the Twitter Application Programming Interface (API) and allow users to read others' tweets and post their own. The Iranian authorities don't always know about these sites in order to block them, which allows Iranian citizens to continue to tweet about the events as they occur."

If the government of a nation does not understand or recognize the technological aspects of Twitter and other types of social networking, it takes little imagination to realize that many companies have little ideas as to the existence or use of social networking in relation to their businesses. The reality is that businesses must pay attention to and become familiar with social networking in order to maintain some control over when and how their employees engage in social networking.

You Won't Believe It Until You Read It: Employment-Related Consequences of Going Online

A few examples of recent lawsuits and employment-related problems stemming from various forms of social networking offers a glimpse at the "tip of the iceberg" in terms of who, when and for what purpose employees engage in social networking.

Posting inappropriate photos of yourself in your work uniform can get you fired: A former Delta Air Lines flight attendant, Ellen Simonetti, claimed that she was the victim of sex discrimination when she was fired by Delta Airlines weeks after she posted photos of herself in uniform on her Internet blog. The claim alleged that Simonetti's male colleagues who posted potentially insensitive material on their blogs had gone unpunished.

Simonetti's then blog, dubbed "Diary of a Flight Attendant", contained personal life stories and world views. According to Simonetti's lawsuit, however, it was an assortment of "inappropriate photos" that triggered her dismissal. One photo showed the then 30-year-old with her Delta uniform blouse partly unbuttoned, exposing a glimpse of her bra. In another, she is stretched across a row of plane seats, with her skirt somewhat hiked. This case was stayed during Delta Air Lines bankruptcy proceedings. *Simonetti v. Delta Air Lines Inc.*, No. 5-CV-2321 (N.D. Ga. 2005):

A Company May Not Have an Unfettered Right to Access and Review Contents of an Employee's Personal Website. In *Konop v. Hawaiian Airlines, Inc.*, 502 F.3d 868 (9 Cir. 2002), plaintiff Konop, a Hawaiian Airlines pilot, was upset that his union, the Air Line Pilots Association ("ALPA") was considering certain labor concessions in its collective bargaining contract negotiations

with Hawaiian. Konop created a web site containing statements critical of Hawaiian's President, and urging Hawaiian employees to consider alternative union representation.

The Ninth Circuit Court of Appeals (with jurisdiction in Oregon, Washington and other Western states) held that the unauthorized access and review of the contents of a password protected web site can constitute violations of federal laws including the Wiretap Act and the Stored Communications Act. The court also held that an employer's accessing without authorization of such a web site created by one of its employees, which site is critical of officers of the employer and urges company employees to consider alternative union representation, can constitute impermissible surveillance of union organizing activities in violation of the Railway Labor Act.

What Happens When More than Just Your Family and Friends Read Your Postings. On January 28, 2005, Mark Jen was fired from Google after just 11 days of employment for allegedly blogging on his personal website regarding Google products. Mr. Jen's blog, which he intended to maintain as a personal journal of his experiences as a Google employee, included candid praise and criticism of his new employer on a variety of topics, including the intranet, his work laptop, a sales conference, and compensation. Management personnel at Google also were reading Mr. Jen's blog.

Within the first 10 days of his employment, Mr. Jen disclosed in his blog that he had been asked to remove some information from prior postings that Google considered to be sensitive information about the company's finances and products. A short time later, Mr. Jen said he was fired from Google without explanation. Mr. Jen believes his blog was either a direct or indirect reason for his termination. When the story of Mr. Jen's termination hit the blogosphere, Google declined comment.

Calling a CEO Names on a Message Board Will Get You Your "15 Minutes" and a Lawsuit. *HealthSouth v. John Doe*, which later became *HealthSouth v. Krum*, Case No. 98-2812 (Pa Ct. C.P. 1998), involved a disgruntled former employee of HealthSouth, a publicly-traded corporation operating rehabilitative healthcare facilities, who posted several scathing and ad hominem allegations on a Yahoo! Finance message board. Krum posted under the name "I AM DIRK DIGGLER," a reference to the male porn star in the movie, Boogie Nights. In her article, "Silencing John Doe: Defamation & Discourse in Cyberspace" (49 Duke L.J. 855, 866 – 68 (2000)), Lyrissa Barnett Lidsky reported that Krum accused HealthSouth's CEO, Richard Scrushy, of inappropriate actions with regard to Medicare reimbursements. He also described, in detail, an alleged affair he was having with Scrushy's wife ("I am dirk diggler and I have what [Richard] Scrushy wants. Too bad I keep giving it to his new wife . . . [and] [a]s for those of you who disapprove of my crowing about sexual liasons [sic] with Dick's wife, lighten up. I'm practicing safe sex." HealthSouth ultimately sued Krum for libel and commercial disparagement, and Richard and Leslie Scrushy sued him for libel and intentional infliction of emotional distress.

As Lidsky's article notes, it turned out that Krum was a food-service worker at Penn State University, who lost his $35,000 per year job after the lawsuit was filed. Moreover, Lidsky reported that the alleged affair with Scrushy's wife was a complete fabrication.

Using Your Child's Online Account to Attack Labor Organizers: As reported in Nolo's Employment Law Blog on May 21, 2008, a Burger King executive used his middle school-aged

daughter's online identity to attack a farm workers' advocacy group that was trying to increase pay and improve conditions for tomato pickers. Although Burger King declined to name the employee, other reports claim that it was Vice President, Steven Grover (who, according to a company telephone operator, no longer works at Burger King).

Lawyers Get In Trouble Too: What happens when a lawyer uses his blog to call a Judge unflattering names? The lawyer gets in trouble with the state bar association. According to a September 12, 2009 article in the New York Times on line, a Florida lawyer said in his blog that a judge hearing one of his cases was an "Evil, Unfair Witch." The Florida Bar Association issued the lawyer a reprimand and a fine for his posting.

According to the Times, the lawyer initially consented to a reprimand from the bar last year, but the Florida State Supreme Court decided that the case implicated the First Amendment (freedom of speech), and the American Civil Liberties Union of Florida argued that the lawyer's statements were protected speech that raised issues of legitimate public concern. Ultimately the court affirmed the disciplinary agreement and Mr. Conway paid $1,200.

The Times also reported that an Illinois lawyer lost her job as an assistant public defender after 19 years of service over blog postings, and that she now also faces disciplinary hearings. According to the complaint by officials of the state's legal disciplinary body, the lawyer wrote posts to her blog in 2007 and 2008 that referred to one jurist as "Judge Clueless" and thinly veiled the identities of clients and confidential details of a case, including statements like, "This stupid kid is taking the rap for his drug-dealing dirtbag of an older brother because 'he's no snitch.'" The complaint against the lawyer alleges that not only did see seem to reveal confidential information about a case, but that her actions might also constitute "assisting a criminal or fraudulent act." The case is currently pending.

Who Pays Attention to What You Say on Facebook? When you are a lawyer and the Judge who is presiding over a case in which you are involved pays attention to your Facebook postings, the results can be potentially career-ending. In this case, the September 12, 2009 on line NY Times reported that a Texas judge fielded a request from a younger lawyer to delay a trial because of a death in his family. The judge granted the delay, but checked the lawyer's Facebook page. The Times quoted the Judge as saying, "There was a funeral, but there wasn't a lot of grief expressed online. All week long, as the week is going by, I can see that this lawyer is posting about partying. One night drinking wine, another night drinking mojitos, another day motorbiking." At the end of the delay, the lawyer sought a second one; this time the judge declined, and disclosed her online research to a senior partner of the lawyer's firm. No word on whether the lawyer is still employed at the particular firm.

Example of Employers' Approaches to Social Networking

Although the area of social networking is still new for many employers, some companies have embraced social networking forums and actually encourage their employees to get involved. For example, Sun Microsystems is well-known as one of the first major corporations to encourage its employees to blog. The company even offers server space for personal blogs but warns bloggers not to reveal secrets or make financial disclosures that might violate securities law. Sun also offers advice on how to keep blogs interesting. Microsoft also reports that it encourages blogging and has more than 1,500 unofficial bloggers — the bulk on Microsoft's official Web sites.

Other well-known companies also invite their employees to engage in social networking. The following are two examples of approaches taken by nationally known Northwest-based companies. (Both companies asked not to be identified).

One of these companies took the following approach to creating a social networking policy:

[Our] policy was written from the perspective that we need to guide employees to use social networks responsibly because we know we cannot prevent their access at work. Technology is moving too quickly; employees have PDA, phones, [and] other devices that give them access to social networks at work (even if they are not using company equipment), and we will probably not be successful trying to block all social networking sites. So instead we want to encourage responsibility and appropriate use during company hours.
At this point in time, social networking sites like Facebook are blocked by our systems; however, there are a couple of work groups that have justified access to [use] them for business purposes: Marketing and Business Development. Discussion is underway right now [as to] whether or not access should be granted to all employees (versus on an exception basis), and then use would be managed at the supervisor level.

With these guidelines in mind, this company implemented the following social networking policy:

[Company] regards social media as a form of communication that can encourage relationships among individuals, facilitate new ways of thinking, generate creative solutions to problems, and increase knowledge sharing. While social media offers new opportunities for communication and collaboration, its use also brings on new responsibilities for [Company], its employees and contractors.

This policy applies to all regular employees, temporary workers and contractors of [Company] who participate in use of social media including, but not limited to, the following:

Multi-media and social networking websites such as MySpace, Facebook, LinkedIn, Yahoo! Groups and YouTube

Blogs (such as The Bubble or Yammer)

Wikis such as Wikipedia and any other site where content can be posted

Other products or services that allow for the free posting of information in an electronic, sharable format.

Employees may choose to participate in social networks or other social media activities and we trust and expect that employees will exercise good judgment when doing so. Activities in or outside of work that negatively affect the employee's job performance, the job performance of others, or [Company's] reputation or business interests are subject to company policies. As always, employees are responsible for ensuring their use of social media is consistent with company values, policies and Business Conduct Guidelines. Violation of this policy or any related policy may result in disciplinary action up to and including termination.

To help employees navigate the world of social media, the following guidelines have been established.

Social Media Guidelines
Know and follow [Company's] Business Conduct Guidelines

[Company] provides computing resources and access to computer networks as tools to accomplish business objectives. As such, computer systems should be used for business purposes and in conformity with the company's Business Conduct Guidelines.

The company may monitor, limit, restrict, suspend, deny, or extend access to its data and system resources, and the company conveys no expectation of privacy or confidentiality to employees when using [Company's] electronic assets. Access to such tools is a privilege, not a right and may be discontinued at any time.

If you have any questions about whether you ought to publish something online, chances are the Business Conduct Guidelines, particularly the guidelines around privacy and confidentially, harassment and discrimination, insider information, and electronic communications, will help. If, after reviewing the guidelines, you are still unsure whether you should post something, it is best to seek your manager's advice.

Protect confidential and proprietary information
Social computing blurs many of the traditional boundaries between internal and external communications. Because of this, it's important to remember that you must not disclose information that personally identifies our customers (individuals or employers) on any social networking site. This includes their names, medical and financial records, Social Security and account numbers, addresses and all other data indentifying an individual, group client or customer. Employees must not disclose or use company confidential or proprietary information (such as confidential financial information, business plans or prospects) in any online social computing platform outside of company authorized communications. See Privacy and Confidentiality Policy for more information.

Be mindful that what you publish may be public for a long time
Remember that everything you publish may be copied and repurposed or published without your knowledge or permission by anyone who has access to social media inside or outside of [Company]. Everything you publish may become public and may be viewed by your colleagues, managers and [Company's] customers, competitors and vendors for an unspecified time. You are personally responsible for the content you publish on blogs, wikis or any other form of social media.

Identify yourself and take ownership
The lines between public and private, personal and professional are blurred in online social networks. Be thoughtful about what you post or publish and how you present yourself. If you choose to identify yourself as a company employee or to discuss matters related to [Company] on your website or blog, please keep in mind that although you may view your website or blog as a personal project and a medium of personal expression, some readers may nonetheless view you as a de facto spokesperson for the company. In light of this possibility you must observe the following guidelines:

Ensure that content associated with you does not conflict with your work at [Company] and with company policies.

Unless you are presenting ideas or thoughts in a professional capacity for [Company], make it clear that you are speaking for yourself and not on behalf of the company by writing in first person and include the following disclaimer: "The postings on this site are my own and don't necessarily represent [Company's] positions, strategies or opinions."

Since information posted to social media is in the public domain, be as respectful to the company, our employees, our customers, our partners and affiliates and others (including our competitors) as the company itself endeavors to be.

Do not use company trademarks on your site or reproduce company material without first obtaining permission.

Note: [Company] authorizes only certain employees to speak on behalf of the company or make public disclosures regarding company finances, performance or material information.

Respect copyright, privacy, fair use and financial disclosure laws
For [Company's] protection as well as your own, it is critical that you respect others' intellectual property rights, including [Company's] own copyrights and brands. You should never use the name, trademark or logo of [Company] for any purpose other than authorized business; and any use must be consistent with [Company's] Policy for Trademark Use.

Respect others
Remember that [Company] is a national organization whose employees, customers, business partners, and vendors reflect a diverse set of values and points of view. Don't be afraid to be yourself, but do so respectfully. Do not engage in any conduct that would be unacceptable in [Company's] workplace. This includes not only the obvious such as avoiding the use of ethnic slurs, personal insults, obscenity, and pornography, but also proper consideration of privacy and topics that may be considered objectionable or sensitive. See Harassment and Discrimination Policy, Standards of Conduct Policy and, Information Systems Security and Usage Policy for more details.

Always take the high road
Keep the tone of your comments respectful and informative, never condescending or "loud". Use sentence case format, not capital letters. Don't pick fights, be the first to correct your own mistakes, and be truthful. Don't alter previous posts without indicating that you have done so. It is alright for employees to disagree, but please don't use social media to air your differences in an inappropriate manner or to engage in inflammatory debates.

The second company, which has a policy of not sharing its internal policies with anyone outside the company, offered the following summary of its policies relating to social networking:

We have internal blogs (many) as well as IM's and other technology to facilitate employee communication. We simply provide that employees refrain from overuse during work time and require

that all postings/communications not violate our code of ethics or anti-discrimination/harassment policies. As for outside forms of communication, we do not take kindly to employees portraying personal opinions as those of the company (either directly or indirectly) and we are diligent about protecting the brand.

A number of other well-known employers also have recently announced polices regarding social networking. For example, the National Football League recently announced that it will allow players to use social media networks this season, but not during games. Players, coaches and football operations personnel can use Twitter, Facebook and other social media up to 90 minutes before kickoff, and after the game following traditional media interviews.

During games, however, no updates will be permitted by the individual himself or anyone representing him on his personal Twitter, Facebook or any other social media account, the league said. The use of social media by NFL game officials and officiating department personnel will be prohibited at all times. The league, which has always barred play-by-play descriptions of games in progress, also extended that ban to social media platforms.

The television station ESPN also recently announced the following policy concerning social networking:

ESPN regards social networks such as message boards, conversation pages and other forms of social networking such as Facebook and Twitter as important new forms of content. As such, we expect to hold all talent who participate in social networking to the same standards we hold for interaction with our audiences across TV, radio and our digital platforms. This applies to all ESPN Talent, anchors, play by play, hosts, analysts, commentators, reporters and writers who participate in any form of personal social networking that contain sports related content.

Specific guidelines include:

- Personal websites and blogs that contain sports content are not permitted
- Prior to engaging in any form of social networking dealing with sports, you must receive permission from the supervisor as appointed by your department head
- ESPN.COM may choose to post sports related social media content
- If ESPN.com opts not to post sports related social media content created by ESPN talent, you are not permitted to report, speculate, discuss or give any opinions on sports related topics or personalities on your personal platforms
- The first and only priority is to serve ESPN sanctioned efforts, including sports news, information and content
- Assume at all times you are representing ESPN
- If you wouldn't say it on the air or write it in your column, don't tweet it
- Exercise discretion, thoughtfulness and respect for your colleagues, business associates and our fans
- Avoid discussing internal policies or detailing how a story or feature was reported, written, edited or produced and discussing stories or features in progress, those that haven't been posted or produced, interviews you've conducted, or any future coverage plans.

- Steer clear of engaging in dialogue that defends your work against those who challenge it and do not engage in media criticism or disparage colleagues or competitors
- Be mindful that all posted content is subject to review in accordance with ESPN's employee policies and editorial guidelines
- Confidential or proprietary company information or similar information of third parties who have shared such information with ESPN, should not be shared
- Any violation of these guidelines could result in a range of consequences, including but not limited to suspension or dismissal.

Should You Have a Social Networking Policy?

Although it is clear that many employers have implemented social networking polices, some experts question whether a separate policy is needed at all, given more general employment guidelines and common sense.

Some employment lawyers believes that a policy on social networking can tie the hands of employers because such policies require the employer to anticipate and "draw lines," and once drawn, an employer can get entangled in litigation over which side of the line the conduct or content fell.

However, an employer may have legitimate concerns about the amount of time employees spend "cyberslacking" as it relates to social networking sites (as well as Youtube, fantasy sports and celebrity gossip sites). In this case, it may well be appropriate to develop policies and procedures to limit the amount of time an employee may engage in these kinds of pursuits for personal reasons.

Upon closer examination, many employers are likely to determine that a social networking policy is appropriate. The above examples offer some ideas as to the types of approaches and policies an employer may want to consider. In general, employer should consider the following when determining the content of a social networking policy:

- The requirement that personal blogs, tweets, Facebook postings and other on-line communication should have clear disclaimers that the views expressed are solely those of the author and do not represent the views of the company.
- The requirement that content published on an individual employee's blog, tweet, Facebook and other online communication must comply with the company's policies concerning harassment, discrimination, confidentiality, and disclosure of proprietary data.
- Reminding employees to be respectful to the company, other employees, customers, partners, and competitors.
- Reminding that social media activities cannot interfere with the work commitments, with a specific reference to the company's electronic communications use policies.
- Instruct employees that they are not to reference or site company clients, partners, or customers without their express written consent and that a copy of such consent must be provided in advance to the company's Human Resources Director. Additionally, and regardless of having obtained such consent, employees should not be permitted to publish any information regarding a client or customer during the engagement/period of service.
- Instruct employees that they are required to adhere to all copyright laws, and reference or cite sources appropriately.

- Remind employees that company logos and trademarks may not be used without advance written consent, which must be provided to the company's Human Resources Director.