



# The New Frontier: Social Media and Employment Law



PowerPoint Presentation by:

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# What is Social Media?



Social media refers to the congregation and communication of people connected through Internet communities

# How Does Social Media Affect Employers?



The explosion in use of social media in our society has created exciting new opportunities and dangerous challenges for employers

# Examples of Social Media





# Facebook Company Statistics

- More than 500 million active users of Facebook
- 50% of active users log on in any given day
- More than 1 million websites have integrated with Facebook

(Facebook statistics webpage 10/19/10)

# Facebook User Statistics, Cont'd

- Average user has 130 friends
- People spend over 700 billion minutes per month on Facebook
- There are more than 150 million active users currently accessing Facebook through their mobile devices
- People that access Facebook on their mobile devices are twice as active on Facebook than non-mobile users

(Facebook statistics web page 10/19/10)

# How Are Employers Using Social Media?

- Hosting their own company sites
- Encouraging employees to use social media to:
  - 1) Actively promote the company
  - 2) Enhance business relationships
  - 3) Foster the exchange of useful, non-confidential business information
- Recruiting
- Investigation and termination of employees



# Employers are Blogging!






# Employers are Facebooking!



facebook

Search

Home Profile Account



Suggest to Friends


Expect More. Pay Less.®

Information


Founded:

The first Target store opened in 1962. But there's more to our story, going all the way back to 1902. Learn all about it at [Target.com/history](http://Target.com/history).


4 Friends Like This




Nicole Modzeleski



Nicole Martin



Karen E. Jardine



Jennifer Johnson Lindner

1,059,555 People Like This

Target


Like

Wall Info Video Play + Learn Liberty Club Wedd >>

Target + Others Target Just Others



Target Meet a busy mom with a serious sweater addiction. Cardigans 24/7 = boring. Luckily, Nina Garcia has tons of ideas to transform this one-trick wardrobe into a stylish collection of everyday looks. <http://bit.ly/dbPQIL>



Nina Garcia Tackles Blah Basics, Vol. 1


bit.ly

Let's face it—wardrobe basics are a blessing and a curse. They're great because they help us expand the possibilities of our closets. But when too many basics wiggle their way into an outfit, it gets downright boring. Thankfully, fashion expert, author and mother Nina Garcia is here to help wrangle ...

15 minutes ago · Share

25 people like this.


View all 26 comments



Jackie Morin Allen @Vidie - I agree! I'm normally wear the bigger end of the misses section, but I have a hard time finding regular or plus size clothes at Target.

Let's not even get started on the skin tight maternity clothes ...


54 seconds ago · Flag



Terri Vanden Bossche Masters

Vidie, I would call their customer 1-800 number and let them know. I have done that on a few things and they listened. Mikaela, Some sizes just don't fit all because all bodies are shaped differently. My daughter who is 17 is very small and she finds alot of stuff at Target that fit her. Especially since they carry alot of extra small sizes. You should let the 1-800 number know also. Take care both of you! :)

32 seconds ago · Flag



Target Pretty prints are everywhere this spring. We're especially smitten with floral tops & solid cardis. So cute! For more spring looks check out <http://www.target.com/merona>

How do you wear florals?


option 1: On a skirt

option 2: Definitely a top

option 3: Scarf, please

Create an Ad

Facebook Pages



Facebook Pages help you discover new artists, businesses, and brands as well as connect with those you already love.

More Ads

Chat (3)

# Recruiting:



## A Great Tool with Risks

53% of employers use social networking sites to research potential employees, and 2 out of 5 admit finding information that led them not to extend an offer

(January 2010 survey from CareerBuilder.co.uk)

Find out what the Applicant is really like . . .

Fabricated Credentials!



Questionable Judgment?



But at what risk?



# Revoking Offers

A soon-to-be Cisco employee posted the following tweet on Twitter:

Cisco just offered me a job! Now I have to weigh the utility of a fatty paycheck against the daily commute to San Jose and hating the work.

Tim Levad at Cisco saw the tweet, and tweeted him back:

Who is the hiring manager? I'm sure they would love to know that you will hate the work. We here at Cisco are versed in the web.

This post went viral overnight and became an internet sensation. The offer was subsequently rescinded.

# Investigations and Terminations



## Social Media:

- Helps employers investigate misconduct
- May provide a basis for terminations
- Creates a potential treasure trove of evidence to support employer claims and defenses in trade secret and other employment-related cases



# Is It Permissible to Terminate Employees Based on Social Media Use?

“Dear Abby:

My wife was hired for an administrative position. On her first day of work, they called her into the human resources director’s office and told her she was being “let go” because of her website.

The site has photos of her when she worked as a model for a large department store. They are in no way provocative or overly revealing. Photos of our children are also on the site.

The HR director told her that one of the other (internal) applicants had Googled her and had seen the site. An image so upset the other applicant that she made a formal complaint, which caused my wife’s dismissal!

We consulted a lawyer and contacted the local Equal Employment Opportunity Commission only to be told that North Carolina is an “at will” employment state and that the employer did nothing wrong. We feel their actions were wrong. Is there anything that can be done? – Yankee in Confederate County

“Dear Yankee:

I’m sorry, but the answer is no. In most states there is a presumption of “at will” employment unless you have a written contract to the contrary. However, the employer cannot terminate an employee for an illegal reason – such as age, religion, gender, sexual orientation or a disability. It does not appear from your letter that your wife was terminated for an illegal reason, but what happened stinks anyway.”

May 3, 2010, syndicated newspapers

# Examples of Permissible Terminations



Certain courts have upheld terminations based at least in part on Internet searches of social media sites

- *Marshall v. Mayor / Savannah*
- *Snyder v. Millersville University*

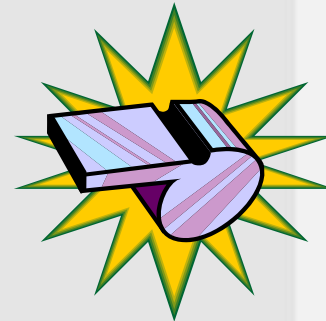
# Use Caution When Terminating Employees . . .



- Discrimination/Equal Enforcement
- Discovery of Protected Status  
(Sexual Orientation, Disabilities, Religious Affiliation, Pregnancy, etc.)

# Use Caution When Terminating Employees, Cont'd

- Protection of legal off-duty activities (such as under state law – *i.e.*, California and New York)
- National Labor Relations Act union protections
- Whistleblower protection
- *Konop v. Hawaiian Airlines*

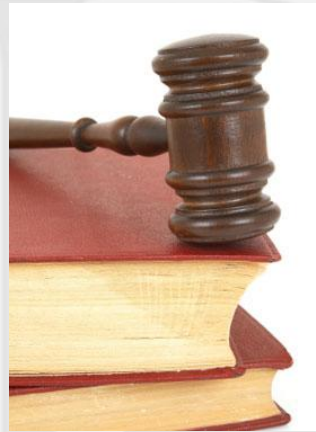




# Dangers of Social Media Use to Employer



# Potential Legal Liabilities and Serious Business Issues for Employers



- Employees' defamation of co-workers or others
- Trade libel or harm to reputation of employers or competitors
- Postings that embarrass or harm the employee, co-workers or the employer

# Legal/Business Issues Cont'd

- Improper disclosure of trade secrets or confidential/proprietary business information
- Harassing or discriminatory communications
- Lawsuits and discoverable information
- Securities fraud
- Waste of employee work time



# More Dangers to Employers:

## Federal Laws and Regulations



- FTC Guidelines re employee endorsements or testimonials
- False advertising (Lanham Act)
- Failure to disclose material connections between advertiser and endorsed company

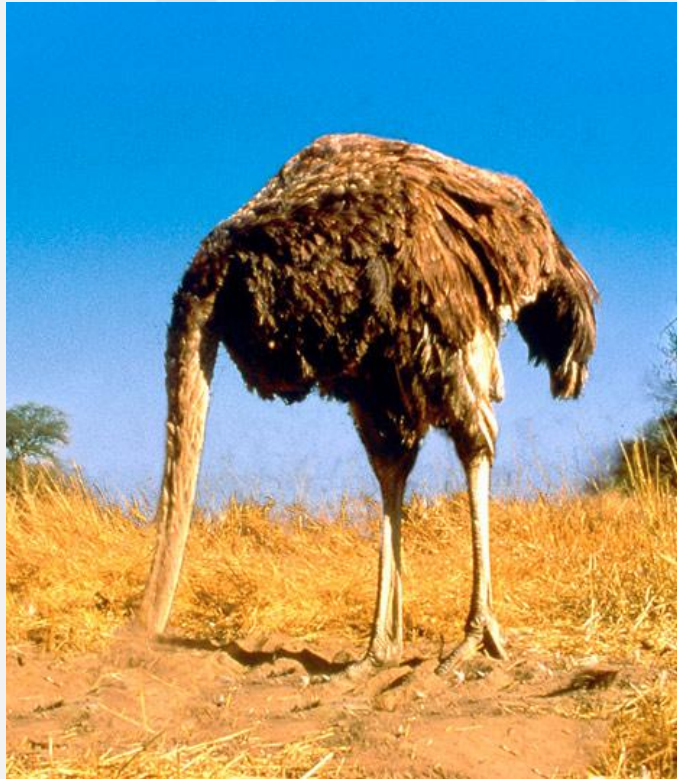
# Employees' Right to Privacy



- Right of Privacy under state law (such as California constitutional right of privacy)
- Common law privacy rights
- Federal Stored Communications Act
- Computer Fraud and Abuse Act
- *City of Ontario v. Quon*
- *Pietrylo v. Hillstone Restaurant Group*

# Does Your Company Want to Be...

Like This?



Or Like This?





# Should Your Company Develop a Social Media Policy?

- Yes, Coordinate with other related policies such as policies on e-mail, Internet and electronic media usage, code of business conduct, and discrimination/harassment
- Address the fundamental issue of company culture and approach to social media use by employees, i.e. to embrace and encourage it or be wary of it, or some combination of the two.



# Issues to Consider in Drafting a Policy

- Determine how much personal use of social media during work time, if any, is acceptable
- Require disclosure/approval of company-related content
- “Friending” of bosses, managers, subordinates, and clients, whether of the same sex or opposite sex
- Reserve the right of the company to monitor employee use of social media while at work or while using company electronic devices
- Include the right to hold employees accountable for use on their personal devices and/or while on non-work time where the company’s business interests are implicated



# Additional Policy Issues

- Specify uses of social media that violate company policy or legal requirements
- Emphasize the use of common sense and good judgment when using social media in a way that affects the company, its customers or its employees



# Monitoring and Enforcement

- Decide what monitoring the employer will do and by whom
- Training
- Active and consistent enforcement of your policy
- Future revisions





# Panelists

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