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## **SOCIAL NETWORKING WEBSITES IN THE PUBLIC WORKPLACE**

### **What's Legal; What's Not**

What restrictions can you impose as a public employer on an employee's use of Facebook, Twitter, MySpace, blogging, etc.? Social networks have become part of many people's day-to-day work. Approximately 54% of large employers block social networks completely at work, while 19% of large employers limit employee access to social networking websites to business related activities. The rapid growth of online social networks is blurring the lines between professional and private lives.

The use of social network sites is not a fad. In 2010, Gen Y will outnumber Baby Boomers, and 96% of them have already joined social networks. Everyone from government agencies to Fortune 500 Companies is engaging in use of social network sites, and so are their employees. Government agencies are harnessing social media websites to reach out to constituents. For example, cities use Twitter and Facebook to keep residents up to date on street closures, events, and other issues. Universities and local public school districts are taking cues from their students and are jumping onto social networking websites. School districts set up Twitter and Facebook accounts to break news about upcoming events or to publicize their achievements. Social websites make it easier and faster to reach a larger and more diverse audience.

The question that continues to arise is what should public employers do? The key for any public employer is to develop a policy to govern the use of social networking sites by employees and regulations or protocols to implement the policy. Based on such policies, public employers can set clear guidelines regarding social networking activities and provide disciplinary measures in the event violations occur.

Employees are not always the only ones liable for what they post online. Public employers can be vicariously liable for an employee's blog or tweet, leading to liability to the third party affected. Employers could also be held liable for employees' activities online, regardless of whether their participation is on the job or during their off hours. Employer liability may include violations of the Electronic Communications Privacy Act, harassment, bullying, discrimination and retaliation. Third party claims could arise for defamation, criminal conduct, and copyright infringement. Public employers also need to be concerned with the idea that their resources are paid for with public funds, and are now being used for the private and personal activities of employees.

Creating a social media policy, which outlines permitted employee activity, is essential to help alleviate possible employer liability. For example, policies should state that an employee is not permitted to post anything that suggests that he or she is speaking on behalf of his or her employer and require an employee to be personally responsible for the content they publish on

blogs, websites, wikis or any other form of user-generated media. Employees should be required to identify themselves and their position with their employer when discussing their employer and make clear that the employee is speaking for his or herself and not on behalf of the employer. Employees should use disclaimers when publishing content to any website outside of employer's system. Further, employees must be required to respect copyrights, prohibited from providing confidential information, and barred from referencing clients or suppliers without approval.

Completely shutting down access to social networks is an option, but may be disadvantageous to your organization. An organization should balance the risks with the benefits of these communication tools. These are powerful tools, but employers and employees need to be aware of some of the risks.

In addition, for educational institutions, additional issues arise with the use of social media related to the relationship between staff and students. School districts can run the risk of creating open forums and violating First Amendment rights. Additional issues arise related to the discipline of students based on their comments on social networking sites. These can all be addressed through clear policies.

Organizations should ensure that their policy addresses the latest technologies, while managing free speech and employer management and operation issues. Lastly, social computing policies and protocols must be monitored and continue to evolve as new technologies and social networking tools become available. If you have questions regarding social networking in the workplace or you need assistance creating a Social Networking Policy, please contact your Lashly & Baer attorney or [Kathryn B. Forster](#) at (314) 621-2939.