

First Steps Toward a Law Firm Social Networking Policy

RANDY WILSON

Let's say your firm hires a new lateral. After he starts work, it comes to light that he badmouthed his old firm on Twitter. The legal blogs pick up the story, it goes viral and suddenly the news about your firm's exciting new star gets replaced by gossip about a disgruntled partner who said rude things about his former employer. Or, let's say you have an attorney at your firm who maintains his own blog unmonitored by the firm and trips over conflict issues or uses your firm's logo, branding, or messaging in potentially damaging or embarrassing ways. Does your firm have a clear policy explaining your firm's stand on social networking to prevent problems down the road?

Dangers of LinkedIn recommendations

Social networking issues arise with all law firm employees not just attorneys. These issues range from lost productivity checking Facebook or from staff soliciting others for LinkedIn recommendations. For example, if a paralegal solicits a LinkedIn recommendation from a partner who agrees to give him or her a glowing recommendation, this could pose problems if the paralegal is subsequently terminated for cause and sues. Every employee should be counseled about the use of LinkedIn recommendations.

Companies and law firms are using social networking in the hiring process

While there are risks associated with companies allowing their employees to use social networking, it is a useful tool, particularly during the hiring and screening process. According to a study published in 2009, Harris Interactive found that 45% of all employees use social networking to screen candidates. That number jumps to 53% for professional services such as law firms. The top three social networking sites for employer screening are Facebook, LinkedIn, and MySpace.

Employers reported that 35% of the time they found content that discouraged them from hiring candidates with the top three red flags being inappropriate photos, evidence of drug use or excessive drinking, and badmouthing a previous employer. However, they also found content on those sites that made them more likely to hire someone, for instance a profile that

documents the candidate's relevant skills and talents or that the candidate's personality seems like a good fit.

But there are liability risks in doing so

Employers need to be aware that researching job candidates by using social networking websites has its legal downsides as well. There are local, state, and federal laws regarding race, age, disability, religion, sexual orientation, and so on that protect individuals against discrimination. If a candidate who falls into one these categories posted information that reveals such pertinent, personal information on a social networking website, and if that person can prove that a potential employer viewed such information before denying them a position, it could result in liability on the employer's part.

How should law firms cope with these issues?

First, the policy should be developed with input from partners, associates, staff, administrative managers, IT, marketing and human resources. Those tasked with writing the policy should be educated in how social networking works, appropriate and inappropriate use and the pitfalls as well as benefits. Next, this group's role needs to be ongoing as this will be the first version of a policy that will evolve. Social networking isn't going away, but it's also likely to look very different within the next couple years. Your policy will evolve with the technology.

Cracking down doesn't work

Law firms must first face the reality that social networking has loosened control over communications with employees, clients, prospects and the larger society. If they don't and instead enforce draconian measures, they will create poor

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morale, viral bad press, stifled creativity and brain drain. Once the new reality is accepted, then law firms can craft a policy that encourages appropriate use of social networking during working hours and beyond.

Employees must face a new reality, too. They put their careers at risk by inappropriate use of social networking. That's why it's essential that the firm's social networking policy include a training component. Employees have a strong incentive to use social networking to benefit their organizations, but they need to know how the appropriate use of social networking will benefit them.

Privacy, privacy, privacy

While a law firm's social networking policy should address a number of functions - legal and business risks, appropriate and inappropriate behavior - the critical issue is privacy. If employers and employees understand how to protect their privacy, they can avoid many of the problems inherent in social networking. It's critical to understand the terms and conditions of social networking sites which outline how the site uses their information. All users of any given social networking site also need to understand the privacy settings of these sites. Do they automatically make a user's information public?

Facebook & Google Buzz privacy controversy

This was what Facebook did by default and they were sued by the Office of the Privacy Commissioner of Canada. Out of that litigation, Facebook agreed to change its privacy settings so that users can choose to make content public rather than having to proactively choose to make it private. It is expected that more social networking sites will follow suit.

But late last year, Facebook changed its privacy settings causing even more controversy because privacy groups say the company is making more personal information publicly available. Class action lawsuits have been filed. Now Google's new social networking application, "Buzz" has been attacked for similar types of issues that make Gmail users' private information, public. Before companies set up "fan" pages or profiles, they need to know exactly

what kinds of privacy setting and rights they have by agreeing to participate in a social networking platform. The same goes for individuals setting up their personal profiles.

Risks of innovation

The rise of social networking, like all innovations, follows a predictable pattern. There is the initial gee-whiz factor and the blank stares from most people when early adopters enthuse over the latest innovation. Then there is broader adoption and the ensuing hype over how Twitter is a panacea. Then a backlash develops based on exaggerated claims, ignorance and fear. Finally, the technology becomes such a basic part of doing business that it no longer garners unusual attention. Society by then is on to the next innovation. Right now, we are in the backlash stage, and law firms that are educated and act with common sense and thoughtfulness can develop policies that give them confidence that their use of social networking is just another part of business as usual.

RANDY WILSON is an attorney, legal marketing consultant and frequent presenter on various marketing and social networking topics. A member of the ACBA Business Section Executive Committee, he co-presented, with Kelly Savage Day, the February 25, 2010 ACBA MCLE program, "Social Networking: Flash in the Pan or Here to Stay?"



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First Steps Toward a Law Firm Social Networking Policy

SELF-TEST

1. Law firms should seriously think about developing social networking policies.
True___ False ___
2. Making a LinkedIn recommendation is harmless.
True___ False ___
3. Fifty-three percent (53%) of professional firms use social networking sites for screening job candidates.
True___ False ___
4. LinkedIn is the #1 site employers use for screening job candidates.
True___ False ___
5. More than half the time professional services employers find content that discourages them from hiring a candidate.
True___ False ___
6. There are local, state and federal laws that protect some individuals against use of social networking sites for screening purposes.
True ___ False ___
7. Social networking policies should be developed with assistance from the company's HR department.
True___ False ___
8. If you write a social networking policy, your company won't have to think about the issue anymore.
True___ False ___
9. Draconian social networking policies are the only way to ensure that your workforce remains productive.
True___ False ___
10. Employees have an incentive to use social networking to assist their employer.
True___ False ___
11. Facebook has been very reluctant to share personal information about their members.
True___ False ___
12. Facebook has been subject to class action lawsuits over its privacy standards.
True___ False ___

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