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The Benefits and Risks of Utilizing Social Networking Sites In the Workplace—What’s an Employer to Do?

by Steven P. Pherson

Social Networking is one hot topic these days. Globally, interest and participation in social media is growing at phenomenal rates. While people increasingly understand how to use Social Networking tools in their personal lives, businesses are experiencing uncertainty regarding the implications of using these tools in the workplace. One thing is for certain: the impact of online Social Networking is far-reaching and presents a range of challenges and opportunities for most organizations. Given the explosive growth of Social Networking sites, such as Facebook, LinkedIn, Twitter, YouTube and others, now is the time for companies to establish policies regarding their use in the workplace.

Social Networking holds great promise for improving corporate communications and addressing business opportunities. Businesses can benefit in a myriad of ways from the use of Social Networking websites. For example, companies can build awareness of their organizations, become more visible to prospective clients, maintain contacts with business associates, increase employee collaboration and improve innovation through idea sharing, and even use them as a vehicle for recognizing the accomplishments of star performers.

Notwithstanding the benefits associated with Social Networking sites, there exist inherent risks arising from the unsupervised use of such sites in the workplace as employees’ postings can create legal headaches for their employer. At first blush, the employer may simply focus on the lost productivity experienced when an employee twitters the day away. While a legitimate worry, the potential impact goes well beyond simply wasting time. Postings on Social Networking sites can compromise company trade secrets and other confidential information, potentially at a much greater cost to the employer than a wasted hour or two spent by an employee chatting with friends.

Against this general backdrop, the relevant inquiries are:

- What are the implications to the employer of the use of Social Networking tools at the workplace?
- How is the employer affected by the use of these sites by its workers?
- How does the employer implement rules and policies to govern these issues?

Although legal precedent regarding the use of these tools remains in its infant stages, now is the time for employers to consider and address the use, and potential misuse, of social media sources. The task at hand is how best to balance the benefits for your company while minimizing your risks.

WHAT’S YOUR COMPANY TO DO? DEVELOP A POLICY!

As legal precedent on these Social Networking in the workplace issues remains sparse and continues to develop, we are seeing businesses implement policies that run the gamut from doing nothing at all to implementing strict rules. Clearly, your company’s decision regarding whether, or to what extent, to allow Social Networking is not a simple one.

BAN? MONITOR? OR REINVENT?

Companies are entitled to regulate what employees do on work time and on company computers. After all, those are the company’s systems, and within bounds of reason, courts are clear that employers can regulate the use of their own systems. The conduct of employees while “on-duty” may certainly be regulated by the employer. Things get a bit murkier once employees are off premises and “off-duty,” even if they have been issued company laptop computers and have remote access to the company’s network from their homes.

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The Benefits and Risks of Utilizing Social Networking Sites In the Workplace—What’s an Employer to Do? *continued*

Indications are that even an employee working from home, if using the company’s equipment and system, must do so responsibly and in compliance with rules and standards.

Social Networking goes a step further with regard to privacy expectations. With Social Networking investigations becoming more prevalent in all types of settings, users of these sites often believe they have some degree of anonymity for their statements and actions. However, your business must be aware that in order to maintain the confidentiality of its trade secrets, it must take appropriate precautions to protect its expectation of privacy, and that means not posting protected information on a public website. Moreover, we are starting to see websites such as Facebook and others, unilaterally taking private information and creating publicly accessible community pages which may contain the unauthorized use of a company’s information.

Not surprisingly, many companies have buried their heads in the sand and their policies have yet to specifically address the use of Social Networking sites. Unfortunately, any organization without an official, well-documented Social Networking Policy is at risk of the above mentioned drawbacks.

STEPS TO TAKE

So, what’s an employer to do? There are several options, each with its own implications. An employer can outright ban the use of Social Networking websites in the workplace. Another option is to update existing policies to incorporate parameters for the use of Social Networking sites. Alternatively, an employer can take a more innovative approach that thoughtfully balances the risk/rewards of using social media tools in the workplace—essentially jumping on the bandwagon of understanding that these powerful and influential new Social Networking sites can positively impact its business. Clearly, one size does not fit all; the use of social media policy might be appropriate for one type of business but not another.

Under any circumstance, the first thing to do is to update company policy manuals and guidelines. All companies should begin by reviewing their policies covering communications, privacy, confidentiality, e-mail use and topics such as employee ethics. Such company policies should—and can—be easily updated to keep up with the times. At a minimum, employers must insert broad language encompassing the use of social media into their code of conduct, or other policy guidelines. So even if your firm has not yet defined the specific extent to which the use of Social Networking sites is allowed at work, it should nonetheless at least modify its employee manual to ensure some general protections against misuse by employees.

Simply banning the use of Social Networking sites in the workplace may appear an uncomplicated solution. However, banning Social Networking use at work could possibly drive use of those sites underground. The reality is that people use such sites to communicate with their families and loved ones. Moreover, this all-or-nothing approach would appear to be a concession to forego the potential benefits Social Networking has to offer.¹ Employers considering monitoring employees’ use of Social Networking sites will also have to balance employee privacy. And not to be overlooked when implementing such an all-or-nothing policy are intangibles such as employee morale, the potential “Big Brother” factor and the impact on firm culture.

CONCLUSION

As Social Networking is here to stay, more and more companies will not just be placing band-aids on their existing policies but will create and implement procedures specifically directed toward the use of Social Networking sources in the workplace. The take-away message regarding these issues is that employers can no longer ignore either the potential benefits or the risks of this phenomenon. Even though litigation over social media issues remains in its infancy, it is not too early for employers to understand and address Social Networking implications and to take preemptive action with regard to their internal policies governing these issues. Employers are well advised to craft appropriate policies and procedures that are consistent with their industry and firm culture and apply them in a consistent, evenhanded and nondiscriminatory fashion. And remember, because this technology is evolving so rapidly, employers should remain diligent by staying current with new developments and revisit their Social Networking Policy regularly. Finally, whatever angle an organization decides to undertake on these issues, their Social Networking policy should be documented and fully communicated to employees and managers alike.



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¹ Some firms may limit the use of Social Networking sites to upper management, or pre-approved employees.

Schuyler, Roche & Crisham Prevails on Case of First Impression Before the Illinois Appellate Court

On March 31, 2010, the Illinois Appellate Court issued its opinion in *Board of Education, Proviso Township High School District No. 209 v. Jackson*, No. 1-09-0629, interpreting for the first time the Illinois School Code's requirements for multi-year contracts for school superintendents. The Appellate Court affirmed the trial court's judgment that the superintendent had a valid and enforceable contract and rejected the School Board's arguments that the contract did not contain adequate performance goals. The school superintendent was represented at trial and on appeal by Schuyler, Roche & Crisham attorneys Mike Braun and Ed Copeland.

The School Board had terminated the superintendent's employment and sought to avoid its obligation to pay the remaining salary and benefits owed under that contract by claiming that the contract did not contain goals for student performance and academic improvement as required by the Illinois School Code. The trial court rejected this argument and concluded that the superintendent's contract not

only included appropriate goals, but also that the superintendent had met the goals.

The Appellate Court, in a 21-page decision, agreed and determined that the Illinois School Code gave broad discretion to local school boards to determine the sufficiency of a superintendent's goals and to evaluate the indicia of improvement within the school district.

Ed Copeland and Mike Braun represent school administrators in employment-related matters ranging from contract negotiations to termination of employment situations. Ed Copeland is a past chair of the Illinois State Board of Education.

Carrie E. Cope Joins Schuyler, Roche & Crisham, P.C.



Schuyler, Roche & Crisham is pleased to announce that Carrie E. Cope has joined the firm as a shareholder. Ms. Cope's expertise is in insurance law with a focus in the areas of Regulatory and Compliance and Specialty Lines Claims practices (with an emphasis on directors' & officers' liability). Joining her are associates Danielle Harrison and Keith Mandell as well as filing director Audrey Smith.

Cope advises clients on a wide variety of regulatory and compliance issues in the United States and foreign jurisdictions. Her clientele includes insurers, agents, brokers, reinsurers, reinsurance intermediaries, alternative risk insurance groups and third party administrators. She also has extensive legal experience in product development and policy and endorsement drafting for both commercial and personal line insurance policies. A separate but related practice area developed and led by Cope is in specialty lines claims monitoring and coverage consulting services to the insurance industry, concentrating in directors' and officers' liability, professional liability and employment practices' liability.

Cope is a widely published author on insurance law topics. Her most recent works include "Regulation of Policy Forms" in *New Appleman on Insurance Law* (LexisNexis 2009) and a book she co-authored in 2008 with attorney Joseph Monteleone, entitled *Directors' and Officers' Liability: Exposures, Risk Management and Insurance Coverage*. Published by National Underwriter, the book focuses on the D&O needs of public, private and not-for-profit corporations, the nature of the exposure, common D&O claims, risk management and insurance coverage.

"Carrie is a terrific lawyer and a great person," said Schuyler, Roche & Crisham president, James L. Komie. "Plus, it's obvious her clients value her highly. Carrie's a great addition to our firm."

NEWS BRIEFS

CHARLES H. COLE, shareholder and member of the Board of Directors at Schuyler, Roche & Crisham, recently was elected Secretary-Treasurer of the Defense Research Institute, one of six officer positions in this organization. DRI-The Voice of the Defense Bar, is an international organization of attorneys representing and defending the interests of businesses, professionals and entrepreneurs in civil litigation. Prior to this election, Chuck served a three-year term on the National Board of Directors of DRI.

Shareholder ROBERT A. MICHALAK was recently presented with the Center for Disability and Elder Law's ("CDEL") Founders Award for his dedication and service to the organization. The CDEL provides pro-bono legal services to low-income persons with disabilities and senior citizens. Bob is a Founding Director of CDEL and has been involved with the organization since its inception in 1982.

Shareholder EDWARD J. COPELAND was sworn in as a member of the bar of the United States Supreme Court before the full panel of Justices on January 19, 2010.

Partner THOMAS W. MULCAHY authored "LOL Provisions in Design Professional Contracts," which appears in the June 2010 issue of For the Defense, the monthly magazine of DRI-The Voice of the Defense Bar.

Associate CLARE J. QUISH was elected to the Board of Directors of the Appellate Lawyers Association. She will continue to serve as Co-Chair of the Seminars Committee in addition to serving on the Board of Directors.

Shareholder JEAN M. PRENDERGAST was sworn in as President of the Appellate Lawyers Association. In addition, the Illinois State Bar Association recently invited JEAN M. PRENDERGAST to analyze recent Illinois Supreme Court opinions for its "Quick Takes on Today's Illinois Supreme Court Opinions" feature on its website. Finally, the Illinois Supreme Court appointed JEAN M. PRENDERGAST as Chairperson of the Illinois Supreme Court Committee on Character and Fitness in the First District. The Committee works with the Illinois Board of Admissions and assists the Illinois Supreme Court in evaluating applicants to the Illinois bar based on their moral character and general fitness to practice law.

Illinois Super Lawyers magazine recently designated seven attorneys at Schuyler, Roche & Crisham, P.C. as Super Lawyers for 2010, including: CHARLES H. COLE (Personal Injury Defense); THOMAS M. CRISHAM (Personal Injury Defense); THOMAS G. DRATHS (Employment & Labor); DANIEL V. KINSELLA (Employment & Labor); JEFFREY T. KUBES (Construction Litigation); JEAN M. PRENDERGAST (Appellate); and MICHAEL B. ROCHE (Securities Litigation). Four other attorneys were designated as Rising Stars, including: THOMAS W. MULCAHY (Civil Litigation Defense); CLARE J. QUISH (Appellate); MICHAEL T. ROCHE (Business Litigation); and DAVID J. SULLIVAN (Professional Liability Defense).

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