



Blogging and Social Networking: New Challenges in the Modern Workplace

by Lisa R. Lifshitz

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Technology has the capacity to be both a useful tool for increasing productivity in the workplace and a great distraction capable of affecting even the most focused of individuals. Employee blogs (online journals) and social networking websites have become a particular concern for many employers who seek to limit personal Internet usage by their employees. With the recent rise in the popularity of websites such as Facebook, MySpace and Twitter, it has become even more important for employers to effectively manage Internet and e-mail usage both inside and outside of their organizations.

Blogs (i.e., “web-logs”), and social networking sites such as those listed above, are essentially websites that act as online journals. Although many businesses use blogs, they are predominantly used by individuals as a forum for expressing concerns and opinions. Recent estimates indicate that there are more than 30 million blogs in existence today,¹ and that a new blog is created every 7.4 seconds.² Blogging and online social networking will continue to grow in popularity as more individuals access the Internet and as software makes blogging increasingly easy.

Unfortunately, employee blogging can create a tension between individual expression and the employee’s duty of loyalty, which prohibits employees from disparaging their employers or their employer’s products or services. For this reason, the legal debate associated with

blogging and online social networking may be framed in terms of the employee’s duty of loyalty and confidentiality versus their ability to freely express themselves, especially outside of the workplace. While blogs and social networking sites may provide unique insights into the lives of employees, they have also given employees the means to broadcast to the world workplace gossip, grievances and sensitive information about their employers’ businesses.

Anti-employer blogs even have the potential to inflict significant financial harm. In some cases, anti-employer comments posted on blogs and message boards have caused stock values to plunge.³ For example, in 2006, the American health care management firm PhyCor, Inc. saw its stock drop from almost \$42 to slightly more than \$1 as a result of anonymous messages that were allegedly posted online by former or current employees. Although this is an extreme example, the fact remains that employee blogs and negative postings on social networking sites represent a new source of liability for employers.

Although many employers have chosen to simply block employee access to blogging and social networking websites in the workplace, this is only a partial solution to the overall problem, as employees may post disparaging remarks or confidential information from their personal or home computers (although, ironically, they may do so while connected to their company’s networks).

Some employers have also gone to the extreme measure of monitoring employees' Internet and e-mail usage. Although employers in Canada do possess a limited legal authority to monitor information technology in the workplace, any such activity must always be balanced with the employee's reasonable expectations of privacy. A full analysis of this issue is beyond the scope of this article; however, it is important for employers to keep in mind that there are a great many legal pitfalls associated with Internet and e-mail monitoring in the workplace. Employers should therefore seek legal counsel before implementing such a policy or program.

The most effective way for employers to manage the issues and concerns outlined above is through the implementation and consistent enforcement of a clear blogging and online social networking policy that notifies employees about their employer's expectations and reminds them that the proliferation of technology does not in any way diminish their traditional, long-standing duties of loyalty and confidentiality. As a minimum, employers should develop a blogging and social networking policy that states the following:

- Blogging and online social networking must not interfere with work commitments, relationships, performance or productivity.
- Personal blogging and online social networking are not to be done during working hours or using employer resources (including company networks).
- Any disparaging remarks directed at the employer, co-workers, clients/customers and even competitors are strictly prohibited and will result in a variety of disciplinary actions.
- Employees are prohibited from using the employer's trade-marks, logos or slogans on their personal blogs or from disclosing confidential or sensitive company information or the personal information of their co-workers.
- An explanation of the proper channels available to address concerns about co-workers or unlawful conduct.
- A reminder to employees that inappropriate blogging carries the risk that the employer and the employee may be sued for defamation or breach of confidentiality, or may even be prosecuted for securities violations.
- An outline of the consequences and penalties for failing to abide by the policy (e.g., discipline up to and including termination of employment).

A blogging and online social networking policy should form part of a company's broader policy governing Internet and electronic mail usage in general in the workplace. Employers should also require their employees to sign an acknowledgement indicating that they have read the policy, understand it and agree to abide by it, as a condition of using the employer's Internet access and e-mail system. Employers may also wish to consider having the key aspects of the policy pop up on employees' computer screens when they log on to the company's network.

While some of the technology may be new, when addressing the issue of blogging and online social networking in the workplace, employers should bear in mind that they still have the right to direct and control their employees' work, to expect loyal and faithful service from them, to protect their tangible and intangible assets and to defend their reputations.

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¹ T. McCormick, D. Côté, "Blogging in the Workplace - Balancing Rights," (Paper presented at the Sixth Annual Employment Law Summit, The Law Society of Upper Canada, Toronto, Ontario, December, 2005) at 5-2 [unpublished]

² K. Lee, "Anti-Employer Blogging: Employee breach of the duty of loyalty and the procedure for allowing discovery of a blogger's identity before service of process is affected," (2006) Duke L. & Tech. Rev. 0002, at para 6

³ Ibid. at para 9.