



WATEROUS HOLDEN AMEY HITCHON^{LLP}
LAWYERS

Social Networking in the Workplace

By: D. Kevin Davis



Managing employee social networking activities is a challenging task. There are a multitude of possible networking scenarios and situations that occur against the background of competing employer/employee rights.

At its most basic level managing these activities involves the balancing of two competing rights:

- The employer's right to manage the workplace, and
- The employee's right to privacy

What is Social Networking?

Seems obvious? Maybe not. This type of employee activity means different things to different people and industries. A social networking activity that is good for one employer can be bad for another.

For example everyone knows Facebook is a social networking site and most employers will insist that it not be permitted during working hours. However some businesses make extensive use of Facebook to promote their business and thus permit their employees to use Facebook.

Social networking also includes blogs, discussion groups, and sites such as LinkedIn which are more about developing business contacts than personal socializing. Depending on the employers business this type of employee social networking may be extremely useful for the employer or a complete waste of employee time.

The employer's tool for controlling these activities is a comprehensive and effectively enforced workplace policy.

Employer's Right to Regulate

An employer has the right to reasonably monitor and discipline employee conduct, especially those activities that occur in the workplace.

The employer's right to regulate is determined by whether the employer has a legitimate interest in the activity of the employee and a right to discipline misconduct arising out of the activity.

Examples of Employer's Interests in Social Networking Activities

- Right to expect employee's full time and attention during working hours-social networking can be a huge time waster of paid employee time.
- Breach of confidentiality-for example a personal care giver publishing text and pictures of retirement home residents.
- Protecting employer's reputation-defamatory statements regarding employer or other employees published by disgruntled employees on personal blogs.
- Employers have a proactive obligation to provide employees and customers with a safe work site free from violence, harassment and Human Rights violations perpetrated by other employees.

Employees expectation of Privacy

The interests of the employer have to be balanced against employee's right to privacy both within the workplace (low) and outside of the workplace (high).

Employees have a reasonable expectation of privacy, even in the workplace. The extent of the employees privacy right is determined by the nature of the activity, where it takes place, ownership of the hardware/software/server used by the employee and clear policies consistently enforced.

How to manage this issue while balancing the competing rights

Clear, consistent and enforceable policies/employment agreements, detailing the extent to which the employer can monitor social networking activities, is critical to offsetting and limiting employee privacy rights. Why? Through enforceable policies/agreements the employee is consenting to the monitoring they will be subjected to and making that monitoring a condition of their employment.

Issues that should be addressed through Technology Policies

- The extent of permitted access to social media during working hours, which could range from an outright ban to limiting permitted usage (e.g. to breaks and lunch hours or urgent family messaging).
- An outright ban can give rise to problems with enforceability and consistent application. A ban can lead to disgruntled employees finding a way around the policy anyways.
- Permitting access to some useful media e.g. LinkedIn.
- Explicitly spelling out what use is permitted both in and outside of the workplace.

- Denying employee ability to access certain sites.
- Reminding employees that all communications over employer owned server will be monitored and that all such communications are property of the employer.
- Establishing behavioural guidelines when using permitted media.
- Repeating and emphasising that permitted activities will be subject to workplace policies regarding harassment and discrimination.
- Specifying the extent to which employee activity will be monitored.
- Prohibiting disclosure of confidential, proprietary and trade secret information.
- A reminder that all activities outside of work must avoid injuring employer's reputation, refrain from harassing employer, employee or customers and protect employer's confidential and proprietary information.
- Establishing a requirement to password protect all mobile devices that can access employer server.
- Determining the extent to which employee can use employer provided hardware for personal use and confirming right of employer to inspect the device. There may however be limits on the right of employer to inspect purely private communication.
- Prohibiting the storage of confidential data on mobile devices.
- Prohibiting downloading or viewing of inappropriate material such as pornography.
- Retaining right to remove access to employer server when mobile devices are used inappropriately.
- Setting out the consequences of violating company social media policy.

At Waterous Holden Amey Hitchon LLP we have several partners/associates who can assist you in preparing a detailed and practical policy to protect you from the harmful impact of unrestricted employee social networking. Please call Kevin Davis at (519) 751-6405 if you require his assistance.