

This article first appeared in the 2011 Summer Edition of Retail Connections, which is the quarterly magazine of Shelfspace (the Association for Retail Entrepreneurs).

MANAGING SOCIAL MEDIA IN THE WORKPLACE WITH POLICIES

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Introduction

The problems for retail employers arising from the rapid growth of social media include decreased productivity, defamation and disparagement of the employer and its employees and customers on a public and massive scale, disclosure of confidential information, and harassment of employees. Many of these problems are even more complicated by the fact that they can be undertaken by an employee who is off duty and off site including by disgruntled ex-employees.

A recent example

Despite that certain activity may occur off duty, an employer can prohibit and respond to disparaging comments made about the employer or its employees on a private facebook page. Employees owe a duty of fidelity (ie. loyalty and faithful service) to their employers that does not permit them to disparage their employer or superiors. Therefore, employers have always had the legal right to respond to disparaging statements by employees. However, traditionally, the specific statements made during water cooler banter or lunchroom rants were frequently unknown by the employer, difficult to prove and had limited negative impact. On the other hand, disparaging statements made on social media have the potential to be broadcast in a written form to a very large public audience that includes customers and suppliers of the employer. Therefore, even where such conduct occurs off duty and even when a facebook page may only be visible by “friends” of the employee, such conduct constitutes serious employee misconduct because of its potential harm to the reputation and other interests of the employer.

For example, on October 22, 2010, a Member (decision-maker) of the B.C. Employment Standards Tribunal upheld a finding that an employer had not violated the *Employment Standards Act* when it refused to permit an employee to return to work following a

maternity leave: *Re: Walder* (BC EST#D113/10). The Tribunal Member agreed that the employer had just cause to terminate Ms. Walder's employment for her conduct which constituted a breach of her duty of loyalty and faithful service. The conduct included a disparaging statement made on a co-worker's facebook page and disparaging comments made about the employer on a website.

Social Media Policies

The first thing that every retailer must decide is to what level it will either prohibit or promote the use of social media at the workplace. Where a retailer fits on the workplace cultural spectrum of social media will depend on the nature of the business and the interests it must protect. Companies like IBM, for example, have embraced social media in order to enhance the satisfaction of their computer techie employees and the relationships that can be strengthened with customers and suppliers who participate on company sponsored facebook groups. Businesses that have nothing to do with computer technology other than that computers are used by their employees may be more focused on restricting social media use to avoid lost productivity. It is likely that most retailers will want to embrace social media to a degree in order to grow their business.

Once a retailer decides on its approach to social media in the workplace then the most useful traditional tool to manage negative issues associated with the use of social media is the development and publication of a social media policy. While it is not always necessary to have published policies governing the use of social media by employees in order to manage inappropriate conduct, policies that set clear expectations of conduct will assist to achieve employee awareness and defend disciplinary responses. A carefully drafted social media policy will have certain key parts:

1. Purpose of the policy: eg. to establish expected standards of conduct about employee use of social media
2. Rationale for the policy: eg. to protect the retailer's reputation and other legitimate interests as well as to embrace positive aspects of the use of social media by employees
3. All computer equipment and systems including email and internet are the property of the retailer, and employees should not have any expectation of privacy with respect to use of such systems which may be monitored by the retailer

4. The type of permissible and impermissible conduct with respect to the following:
 - a. Personal internet use at the workplace and off duty conduct;
 - b. Participation in company and employee facebook groups;
 - c. Disparagement and defamation of the retailer and its employees, customers, clients and suppliers;
 - d. Breach of confidentiality; and
 - e. Discrimination and Harassment
5. Examples of inappropriate use in cyberspace
6. Employees may not directly or indirectly represent that they are speaking on behalf of the retailer during their online activity
7. Prohibition against the use of the retailer's intellectual property like brands, logos and trademarks
8. A warning that employees may be held personally liable to third parties for their online comments
9. A warning about the consequences of breach: eg. discipline up to and including termination of employment
10. A warning that legal action will be taken, if necessary, against ex-employees for disparaging and defamatory comments made post-employment

It is advisable to notify employees that they have a transition period to remove online content that is not in compliance with the policy. Further, the retailer should consider whether existing policies such as discrimination, harassment, computer use, confidentiality, privacy and codes of conduct require amendment to address social media.

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