



spotlight on risk management

Social Media & The County

Avoid Pitfalls through Establishing Social Media Use Policies

—Josh Dirkse, Program Assistant, Aegis Corporation

Today's counties can no longer feign ignorance to the benefits and potential pitfalls of social media. Social networking and other online connectivity tools are ingrained in the fabric of our everyday lives and continue to add new tools and functionality to expand their reach. Keeping constituents apprised of road work detours or imminent weather dangers on Twitter; posting photos from the county fair on Facebook; or uploading the annual budget PowerPoint to SlideShare, counties can now increase civic engagement by reaching constituents on social media. Social media has also lent tools to human resources professionals who can now screen job candidates with available public information that was difficult to obtain or unavailable years ago.

Regardless of the benefits of social media and its use, there are many pitfalls, as well as litigation awaiting counties extending from the improper use of these tools. To mitigate the risks of social media use exposures, it is advisable to approach county activities from two angles: 1). from the human resources professional perspective and, 2). for employees who access social media while at work.

Social Media & The Hiring Process

Nearly gone are the days of scouring the local newspaper for job openings. A recent study found more than three-quarters (77%) of available jobs can be found on the popular business social networking site LinkedIn. LinkedIn connects over 200 million professionals who network individually or in groups. Users can post job

history information, receive endorsements for skills and expertise and solicit recommendations from clients or colleagues in their respected industry. LinkedIn is a prime source for job seekers as well – allowing users to quickly submit their resume for consideration for job openings.

LinkedIn puts a professional face on an applicant's online presence and can play a beneficial role in the hiring process. However, in today's world it is increasingly rare for an applicant's online presence to be limited. In fact, increasing numbers of employers find that social media plays a vital role in screening potential employees. A recent study by the Society for Human Resources Management (SHRM) found that human resources professionals source LinkedIn (95%), Facebook (58%) and Twitter (42%) presence when considering applicants.

Utilizing an applicant's social media profiles and online presence in any hiring decision has its pitfalls. Social media will often present human resources managers with information that they would not be presented with in a normal application or resume they are reviewing, such as age, race, religion, sexual orientation and political affiliations. Obviously, this information is protected in the sense that represents protected classes of individuals, and cannot be used to guide employment decisions. As a general rule, do not do anything different with social media than you would with an in-person interview.

To mitigate any instance of utilizing protected class information in an employment decision, you should create a "firewall" between the person reviewing social

media or online presence of any applicant, and the person making the final employment decision. This ‘screener’ should have a clear set of “red flag” items to be looking for on social media, such as hate speech or violent tendencies and drug use.

Social Media & Employment

SilkRoad Technology reports in a recent study that 75% of employees access social media daily on the job, with 60% accessing social media multiple times per day. Managing the risk of social media use among employees is founded in a sound social media use policy. It is strongly recommended that counties seek the guidance of legal counsel to develop a policy that addresses the appropriate use of social media and the protections to privacy afforded to employees, and in what cases that privacy may be restricted.

Unfortunately, there is no ‘one size fits all’ approach to establishing a social media use policy. It is important to consider the county’s role in utilizing social media and the use policy should clearly and concisely define the roles and responsibilities in this regard. Attorney Chrissy Hamiel of Phillips Borowski, S.C., recommends that social media use policies:

- *Ensure Legal Compliance.* Consider potential legal ramifications and clearly define what employees may and may not do when utilizing social media. Avoid broad statements that could potentially restrict employees from speaking in private capacities on matters of public concern.

- *Link with Other Policies and Guidelines.* Advise all employees that social media activities are subject to all employer policies, including those designed to provide guidance for technology and email use; protect confidential information and prevent discrimination and harassment.
- *Address Two-Platforms.* The policy should address social media use on private computer systems and devices, as well as those supplied or supported by the county.
- *Protect Your Reputation.* Identify that social media affects the reputation of the county (and also the employee), and employees are prohibited from using the county’s name, logo and trademarks or make any communication for or on its behalf on personal social media accounts.
- *No Expectation to Privacy.* Advise that information posted on social media sites may be widely disseminated and is unlikely to remain private, despite privacy settings, and employees should conduct themselves accordingly.
- *Disciplinary Action for Violations.* Advise that violations of the social media use policy may be grounds for discipline up to and including termination.

To ensure compliance with any social media use policy, it is vital that employees receive training in social media and be educated on their rights and protections under 2013 Wisconsin Act 208, which should be clearly restated as part of any use policy.

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Social Media & The Law

On April 9, 2014, Wisconsin joined a select few of states to enact legislation to protect employees and define exceptions to employee privacy with regards to social media account access by employers. 2013 Wisconsin Act 208 or the Social Media Protection Act prohibits employers from:

- ❑ Requesting or requiring an applicant or employee to disclose social media login credentials of personal accounts or requiring or requesting access to observe a social media account as a condition of employment.
- ❑ Discharging or discriminating against an applicant or employee who refuses access to personal social media accounts or who is opposed to, has filed a complaint or has assisted in an investigation related to an employer's violation of this law.
- ❑ Not hiring an applicant because the applicant refused to provide access to personal social media accounts.

The Act also details exceptions to employee privacy and social media account access. Employers may do any of the following:

- ❑ Take disciplinary or further action against an employee who posts or transmits proprietary and confidential information, including financial data via personal social media accounts without authorization.
- ❑ Conduct an investigation based upon reasonable cause that misconduct occurred on the personal social media account. Misconduct includes transmission of proprietary and confidential information, financial data, any violation of the law, employment-related misconduct,

work rules or employee handbook violations. However, the Act stipulates that the employer may only require *access* or *observe* a personal social media account, not require the employee to disclose access information.

- ❑ Restrict personal social media account access on employer-supplied or supported devices, which is provided by virtue of employment or used for business purposes.
- ❑ View, access or use information about an applicant or employees that is available in the public domain, accessible without access information.
- ❑ Request or require an employee to disclose a personal email address.
- ❑ Inadvertently possess or obtain personal social media account access information through the use of the employer's network or use of an employer-supplied or supported device, so long as this access information is not used to access the employee's personal social media account.

Closing

Social media has been hailed as a "great democratizing force" that has opened opportunities for civic engagement and constituent communication. Utilizing social media will impact your county's reach of communication and recruiting efforts, but ignoring the pitfalls will leave the door open for litigation and a potential loss to your reputation. Ensure you are prepared to dive into these new and ever-changing media by developing social media use policies with the assistance of legal counsel. 📖