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## Employee blogs raise legal issues worthy of policy

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Odds are that your employees are part of the blogging revolution -- and that may pose a risk for your business. Owners and managers should explore their legal rights in regulating the company-related content of their employees' blog posts.

A blog, short for web log, is a website that serves as an interactive journal, updated frequently and accessible to other internet users. According to [technorati.com](#), a site that monitors blogs, there are currently 112.8 million blogs, and that number is increasing by 175,000 a day. It is not uncommon for bloggers to post about their places of employment and their employers.

Blogs often are used as outlets to vent about the irritating habits of a supervisor or who did what at the holiday party. They can also serve as a forum to discuss new projects, rumored layoffs or mergers and the competition. Therein lies a risk: Even a well-meaning blogger may disclose confidential or proprietary information simply by trying to keep friends and family up to date.

Blogs generally are not subject to government regulations so there is really no subject that is off limits. Coupled with the fact that bloggers often fail to appreciate the size of their audience -- some blogs are visited by tens of thousands of viewers a day -- this can result in an employer's liability exposure.

Even company-sponsored blogs pose risks for employers. Employers may be at risk if employees use either personal or company-sponsored blogs to harass or discriminate against other employees. Additional risks include claims of defamation (if posts are made on company-sponsored blogs) and possible security law violations.

As technology is outpacing the law in this area, it remains to be seen how, or if, existing law may be applied to define the parameters of acceptable employee blogging. Certainly, not all employee blogging or postings are illegal. For example, there is no legal basis upon which employers may rely to restrict employee blogging that does not compromise company intellectual property, break security laws, etc. Companies should not attempt to prohibit such basic constitutional freedoms. Any attempt to restrict such posting would likely run afoul of free-speech principles and create a "Big Brother" atmosphere in the workplace. However, when the subject of an employee blog presents content that exposes the employer to liability, the company has grounds for taking action.

Employers should face the risks associated with employee blogging proactively by developing a blogging policy. A well-written blogging policy will provide clarity to employees and a basis for employers to take action if the policy is ever violated. Here are suggestions:

- Instruct, don't restrict, employee bloggers. Keeping in mind that not all employee blogging may be restricted, use your blog policy to educate employees. The policy should clearly define permitted and prohibited content, as well as acceptable use of employer-owned technology. For example, employees should be prohibited from posting confidential company and trade secret information, as well as using unauthorized copyrighted material or trademarks. Finally, employees must be instructed not to criticize competitors, customers, or fellow employees.
- Educate and follow through. Once a blogging policy is in place, train employees on the policy and enforce it. If the blogging policy prohibits employee use of employer-owned technology for anything other than job-related duties, do not turn a blind eye when it is violated. Down the road, it will be very difficult for the employer to establish that violation of the company's blogging policy is grounds for termination if it is not consistently enforced. As with all company policies, be sure to revisit the blogging policy from time to time. This way, it will always adequately express expectations and reflect current law.
- •Don't be too quick to terminate an employee for violating the blogging policy. It is important to consult with an attorney before terminating an employee for blogging. There are some instances where an employee's blog may be damaging to the reputation of the company but still be protected. This was the case in *Konop v. Hawaiian Airlines*, a case involving the blog of a Hawaiian Airlines pilot, Robert Konop. He claimed that he was wrongly disciplined based on the content of his blog. In his blog, Konop stated that the president of Hawaiian Airlines was suspected of fraud, incompetent, and "did his dirty work like the Nazis in World War II." Konop also criticized labor concessions sought by Hawaiian Airlines and the pilots union, and encouraged blog readers to consider alternate union representation. The Ninth Circuit Court of Appeals determined that the content of the blog represented protected union activity and lacked the actual malice needed to make it defamatory.
- Lead by example. Many probably remember the trouble Whole Foods CEO John Mackey found himself in last summer when it was discovered that over the course of several years, he had submitted anonymous posts bad-mouthing competitor Wild Oats. Mackey did not reveal that he was disparaging Wild Oats at the same time the two progressive grocery brands were considering a merger. When Mackey was found out, the Federal Trade Commission stepped in and halted the merger until it could assess what damage Mackey's postings might have had on Wild Oats' financials. While the merger eventually closed, the Securities and Exchange Commission is still investigating Mackey's postings -- a development that is likely the subject of many postings.

The Whole Foods experience aside, corporate-sponsored blogs can effectively connect employees to their employer and customers to a corporation in a valuable way. For this reason, many employers have elected to take a proactive approach to blogging and have established and encouraged corporate blogs: Boeing, Microsoft, and Wal-Mart are just a few examples.

Additionally, personal blogs, and postings to them, may be used by employers researching or looking to discover potential hires. The risk and potential of blogs and blogging are still being discovered. But one thing is certain, blogs are here to stay and employers should find a way to make them work for their companies.

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