Understanding the Impact of Social Media on Human Resources

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I. Introduction

Social media has taken the world by storm. In less than ten years it has moved from dorm rooms to boardrooms, and created an interlinking global web of profiles, opinions, and communities that companies are now scrambling to understand and capitalize on. Social media has transformed the speed, tone, and nature of communication. For companies, social media has opened the door to a trove of new opportunities in marketing, public relations, sales and communications in general. For human resource executives, it offers a mixed bag of challenges and opportunities.

Social media broadly refers to any interactive online or mobile platform designed to facilitate the two-way exchange of digital content and communications. The advent of web 2.0 was fundamentally about making formerly static web pages interactive, and social media has taken that basic principle in countless new directions. Social networks, blogs, microblogs, wikis, multimedia sharing, and information collaboration are just a few examples of these platforms. (See the Appendix on Social Media Platforms).

While not treated extensively here, the development and global use of smartphones (i.e., internet enabled mobile devices) has contributed enormously to the growth of social media. In fact, nearly 40 percent of users in the US now access social media—largely Twitter and Facebook—from smartphones.1 This trend has naturally found its way into the workplace, where employees are often seen carrying two mobile devices—one provided by the company and one personal. The impact of smartphones was highlighted at a recent HR Policy Association Roundtable on Social Media, when one panelist was asked if his company maintained computers in each of its stores for employees to access the company’s interactive online community. The panelist responded, “Do you mean in addition to each employee’s personal device?”

With most of their customers and employees already actively engaged on various social media platforms, even the most traditional companies are feeling the need to participate. The idea of employees promoting products or job openings through their social networks is tempting. Yet from an HR perspective, the idea of every employee effectively running his or her own press office through Facebook or Twitter may present a daunting scenario. Indeed, an employee’s use of social media whether at work or elsewhere is not without risk to their employer.

For HR professionals then, the trend toward social media will require effective risk management as well as finding constructive applications for it which suit the unique culture and needs of their companies. There is no one-size-fits-all social media strategy or workplace policy, but as HR leaders learn more about the potential of this new technology, they will be in a better position to customize it for their own purposes while mitigating the risks. This document, based on discussions with HR professionals across a wide range of industries, aims to provide some guidance about the problems and benefits HR leaders may encounter along the way.
II. Measuring the Trend

Social media has spread around the globe at an astounding pace. Mark Zuckerberg created Facebook in 2004, and today the service has over 800 million members—with over 350 million users logging on through mobile devices. YouTube was created by three former Paypal employees in 2005, and now users upload about 48 hours of video content to the site every minute or roughly 8 years of content per day. LinkedIn launched in 2003, and now grows by about a million new users each week, for a total of over 130 million members across 200 countries and territories. The cumulative result is that about one in every four and a half minutes that Americans spend online today is spent using social media.

It has been a challenge for companies to keep up, but today most have some social media presence. According to a recent study by PR giant Burson-Marsteller, of the global Fortune 100, 84 companies now use either Facebook, YouTube, Twitter or blogs on a regular basis, and a quarter of them use all four services. Over the past year, Twitter has grown the fastest among these companies (up 18 percent since 2010) but Facebook and YouTube made strong gains as well—up 13 percent and 14 percent respectively. It is also worth noting that the intensity of social media use is growing, such that companies increasingly have multiple accounts on each platform.

As social media has developed in the corporate world, faster-growing companies have tended to lead the pack. For example, in 2007 just eight percent of the Fortune 500 maintained a blog, compared to 19 percent of the Inc. 500 (Inc. Magazine’s annual list of the fastest-growing private US companies). By 2010, 23 percent of the Fortune 500 was blogging, versus 50 percent of the Inc. 500 (this is in addition to the rapid proliferation of internal corporate blogs which are more difficult to count). Interestingly, among the Fortune 500, the top 100 companies tend to use social media at a significantly higher rate than the bottom 100. Whether this is due to a more flexible culture or just bigger budgets is difficult to say, but this trend holds true for Twitter, Blogs and Facebook over at least the past three years. Indeed, in a recent HR Policy Association survey all respondents affirmed that there is a business need for accessing social media sites.

Though a myriad of factors may determine a company’s use of social media, there are clearly some industries that tend to be heavier users. According to a recent study, of the 308 members of the Fortune 500 that had Twitter accounts in 2011, the top three industries represented were: (1) specialty retail, with 25 companies; (2) food production/services, including drug stores and consumer products, with 23 companies; and, (3) the insurance industry, which jumped from 13 to 21 companies between 2009 and 2011. Though the insurance industry had the largest presence on Facebook last year, and computer software/office supply companies had the most blogs, in both cases food production/services and specialty
retail were in a close second or third.\textsuperscript{12} By contrast, industries like telecommunications and utilities, tended to be less involved across all three platforms.\textsuperscript{13}

### III. An Ongoing Experiment

Despite the rapid growth of corporate social media use over the past few years, many companies remain skeptical about its actual ability to improve their bottom lines. Some maintain Facebook pages to avoid seeming behind the times, but many are privately unsure of the return on their investment. Nevertheless, social media’s potential is clear and companies that are willing to experiment figure out how to leverage it for their own needs. As one corporate social media expert noted at a recent HR Policy-sponsored event, “[m]any companies go through a trial by fire with social media but most come out stronger for it.”\textsuperscript{14}

A recent survey by the Harvard Business Review asked 2,100 companies to rank the challenges they face with social media. The top three concerns listed were: (1) “understanding the potential of social media to make a difference in [our] business,” (2) “measuring the effectiveness of social media activities,” and (3) “linking social media activities to an impact on company financials and/or ROI.” Only a small group—just 12 percent—felt they were using social media effectively.\textsuperscript{15}

In part, these responses and the general sense of ambivalence many companies feel towards relying heavily on social media can be traced to the fact that effective tools for tracking the success of this technology were only developed in the past couple years and are still not perfect. The Harvard study, for example, found that only 23 percent of companies report using analytical tools to track their success on social media, and of those, just five percent report that they are using more advanced “sentiment” analysis tools.\textsuperscript{16}

However, the results also speak to an underlying wait-and-see attitude about social media that remains prevalent in much of the business community. Even the marketing industry which has been so instrumental in driving corporate use of social media has not yet fully embraced it over other online solutions. For example, though spending on social media advertising in the U.S. increased roughly 55 percent over last year to reach about $3.1 billion that is still just 11 percent of total US online advertising spending for 2011.\textsuperscript{17} It is an astounding growth rate to be sure, but the fact is social media advertising is still at a relatively early stage.

Though most large companies have been relatively cautious about embracing social media, over the past couple years they have been steadily warming to the idea. For example, the survey of the Inc. 500 discussed above also asked respondents to rate how important social media was for their business or marketing strategy. Between 2009 and 2010, the number of companies ranking social media as “very important” rose from 43 percent to 56 percent.\textsuperscript{18} This year roughly 80 percent of US
companies will engage in some form of social media marketing—nearly double the number in 2008—and the online market firm eMarketer predicts social media spending will rise a healthy 24 percent in 2013. Corporate social media use is evolving quickly and is still in its early stages, but it is clearly not going away, and more companies are beginning to recognize its value.

IV. Social Media in HR: Recruiting, Collaborating, Networking, and Labor Relations

The advent of social media promises to substantially alter certain aspects of the HR profession. It has introduced entirely new channels of communications that often blur the line between marketing and HR. Though more uses will surely develop, there are several key areas where social media has had a significant impact on human resources. These include recruitment, the development of internal employee networks, and labor relations.

Recruitment. From a recruiting standpoint, social media offers HR professionals unprecedented access to an ever increasing online talent pool. According to a recent survey by the online recruiting service Jobvite, about 80 percent of U.S. companies will use social media to support their recruitment efforts in some way in 2011—up from about 68 percent in 2009. Of those, 87 percent use LinkedIn for recruiting (up from 78 percent last year) and two-thirds rely on two or more social media platforms. According to the survey, about 55 percent of US companies plan to increase their budgets for social media recruiting, compared to 27 percent who will increase spending on their websites. By contrast, about one third of respondents plan to decrease spending on job boards (like Monster.com or CareerBuilder.com) and about 33 percent will spend less on third party recruiters.

Perhaps the most common use of social media in the recruiting process is simply to drive traffic to a company’s career page. Statistically speaking, career pages yield about one hire for every 826 visitors, so HR professionals are in the business of maximizing web traffic. Just as marketing professionals blast promotional messages out on Twitter and Facebook, recruiters are now using these platforms and others to post job openings and announce upcoming career fairs, which are explained in more detail on their websites. In a slightly new twist, HR professionals are also increasingly responsible for creating online promotional material to attract new hires. This ranges from encouraging employees to film short day-in-the-life-of promotional-type videos, to creating online games for Facebook, or simply operating a corporate blog.
The truly revolutionary effect of social media, however, is that it has enabled recruiters to more easily reach passive job seekers—people who are not currently looking for a job. Networks like LinkedIn, allow recruiters to find, filter and contact potential candidates without even having to collect resumes first. Furthermore, social networks make it much easier for people to share job postings with their own contacts—many of whom are passive job seekers. According to LinkedIn, the typical job posting on their network is forwarded 11 times by members and receives upwards of 30 applications. Therefore, not only do social networks empower recruiters to better tailor their searches, but each job they do post has a ripple effect of referrals to a trove of previously inaccessible passive candidates.

Finally, it is important to touch on the role social networks—whether internal or external—can play in helping companies keep in contact with, and potentially rehire, former employees. According to the 2011 Jobvite survey, about one-third of US employers expect new hires to stay for just two years. Though that number fluctuates depending on the state of the economy, talent is simply more fluid today than ever before. With effective social networks, companies have a way of staying in contact with employees even after they leave. In fact, a recent study indicates that employees who remain active on a company’s alumni network are hired 50 percent faster, and remain with the company twice as long once they are rehired. Hiring employees through social networks can also be significantly less expensive because companies can avoid paying for an external recruiting firm. Thus, social networks may provide a way to cope with increased talent mobility by encouraging these so-called “boomerang” candidates, while at the same time lowering recruiting costs.

**Internal Social Networks.** Beyond recruiting, social media offers global companies a means of fostering information-sharing among employees like never before. When they are successful, internal social networks can be a productivity tool to help employees communicate and collaborate across geographically dispersed organizations. Social media also allows key company leaders to communicate in real time with employees. For example, the senior leadership of a company, including CEOs or CHROs, may maintain a blog where they frequently share their thoughts, post other important information, or communicate with employees in real time.

For HR, social media can be a great way to communicate with a large workforce. In one example, HR professionals at a large US retailer ran a contest on their internal social network to see who could create the best video promoting the company’s new 401(k) plan. The prize was a three-day trip to the company’s corporate offices where they presented the video to company’s executives and Board members. In the end, the company received 27 submissions and enrollment in the plan eventually went up 30 percent.
Labor Relations. Social media has also been successfully used in labor relations—by both unions and management. This can occur in the context of union elections or collective bargaining. As one example, a company may consider blogging or using Facebook to share its perspective on union representation or use these technologies to correct erroneous or misleading information spread by union organizers, who very frequently are using social media. Likewise, such technologies can be used to communicate the company’s position during bargaining. However, the rules of the National Labor Relations Act (as discussed below) are applied to the use of social media by employees and employers.

V. Social Media: Practical and Legal Risks

While social media provides significant opportunities for companies to further their business interests, it presents some very real risks from an employment standpoint. These risks arise not only with employees using social media in the workplace but also with employees using such technology while they are off-duty. Some of the business benefits of social media, such as reaching a vast audience very quickly at relatively low costs, can also present hazards. For example, employees may inadvertently share confidential information or trade secrets about the company or its customers. Moreover, negative publicity, rumors, or inaccurate information released inadvertently or intentionally by employees can have an immediate and lasting effect on company image and brand. In addition, an employee’s post on a social media site may open the door for an action by the Federal Trade Commission for false and deceptive advertising even if the post is not authorized by the employer.

In considering the various risks associated with employees’ use of social media it is important to point out that each of these risks can, and do arise when using other long-established means of communication or interaction as well. One of the challenges for the legal system will be deciphering where the existing rules for traditional communications hold true and where they need to be adapted. A key difference between social media and more traditional communications, however, is that it is often more public, far-reaching, immediate, and more difficult to undo or remedy. The following are some of the most common problem areas when dealing with social media use in the workplace.

Anti-Discrimination and Labor Laws

- National Labor Relations Act generally prohibits employers from discriminating against or having work rules or policies that inhibit employees from engaging in “protected concerted activity” which typically means any discussion among employees regarding the terms and conditions of employment
including, among other things, an employee’s thoughts on management, company policies, or co-workers; such activity is protected regardless of whether the employee is represented by a union.28

- **Title VII, ADA, ADEA** prohibit adverse employment actions taken because of race, religion, sex, national origin, color, disability, and age and these laws also impose certain obligations on employers to protect employees against unlawful harassment from co-workers based on any of these factors.29

- **Genetic Information Nondiscrimination Act** prohibits employers from, among other things, acquiring genetic information, which is defined very broadly; however, employers are not liable for the inadvertent acquisition of genetic information.30

**Employee Privacy Laws**

- **Privacy laws** may prohibit or limit the ways in which employers obtain information from social media sites and accessing private profiles by unauthorized means could constitute invasion of privacy under state or local law.31

- **Fair Credit Reporting Act** imposes certain restrictions on background checks conducted by consumer reporting agencies on behalf of employers, which would include social media background checks.32

- **Electronic Communications Privacy Act** prohibits the unauthorized and intentional interception of an electronic communication while its being transmitted, or the unauthorized and intentional access and disclosure of stored electronic communications; however, there is a business exception.

- **Stored Communications Act** prohibits employers from, among other things, accessing an employee’s electronic communication while it is in electronic storage by a third-party without authorization (e.g., a manager violated the law by accessing an employee’s MySpace postings when the password was acquired under duress).33

- **Defamation** prohibits false statements made about co-workers, customers, suppliers, etc.

- **Off duty conduct laws** prohibit employers from disciplining employees who engage in lawful conduct such as using social media while off duty and off the employer’s premises.34
False Advertising, Terms of Use Violations, Copyright Infringement, Securities Law

- **Federal Trade Commission Guidelines** regarding employee endorsements or testimonials generally require that an employee endorsing their employer’s product or services must disclose their relationship in the post and under certain circumstances employers may be liable for an employee’s false or misleading social media communications even though the employer is unaware or did not approve of the employee’s activities.35

- **Terms of Use** require individuals to comply with the terms of use of third-party sites, particularly indemnity and restricted use clauses.

- **Copyright Infringement** could occur during social media use if employees do not recognize and respect the copyrighted materials.

- **Securities laws** prohibit the disclosure of untrue and material information and individuals trading on material, non-public information.

The growth of social media is a global phenomenon and the legal risks companies face as a result of its use by employees will vary according to the laws and regulations of different states and countries. While the areas of risk discussed above pertain specifically to the US, companies will undoubtedly face similar laws in other countries.

### VI. Mitigation of Risks and Considerations for Employers

To more effectively manage and mitigate the risks associated with employee use of social media, employers should develop a social media strategy, which may include social media policies, practices, and training (where relevant). HR should be a critical part of the process, as each company must custom-fit a social media strategy to suit own culture, business and exposure. At a recent HR Policy Association Roundtable on Social Media, participants identified several factors which are important to consider in developing a social media strategy. These include a company’s:

- corporate culture;
- consumer/customer base;
- industry;
- employment demographics; and
- recruiting strategy.
Development of a Social Media Policy. Many companies believe that an essential part of a social media strategy is developing and implementing an effective social media policy for employees. Companies must decide how much (if at all) they want to restrict employees’ access or use of social media that is related to the workplace. Some companies prohibit employees from accessing social media platforms in the workplace while others allow virtually unlimited access to social media sites and encourage employees to be “brand ambassadors”. Most fall somewhere in between. In a recent HR Policy Association survey, 62 percent of responding employers said they allow access to social media sites through their corporate networks. Of the remaining 38 percent currently prohibiting use of social media on their company networks, 66 percent of those companies are currently considering granting such access.

Interestingly, none of the companies that currently allow employees to access social media through their network regret doing so, and 86 percent believe their employees use social media at an acceptable level. Similarly, none of the presenters at the Association’s Roundtable on Social Media whose companies maintained open use policies had any regrets about it. Indeed, despite a few incidents, many were surprised at how few problems had emerged as a result of social media use in the workplace. Some presenters admitted, however, that they did not initially want an open use policy, but instead felt compelled to adopt such an approach because of circumstances within their industry, customer base, or employee or potential employee demographics.

As time goes on, more and more companies are implementing written social media policies. In fact, 78 percent of respondents to the Association’s survey noted that their company has a written policy regarding the use of social media.

Employers should provide notice to ensure that employees are aware of social media policies as well as any other restrictions that may exist. This not only provides employees with helpful guidance but should also have the effect of officially putting them on notice that their social media activity on company networks or computers will or may be monitored—providing enhanced transparency and more protection against potential invasion of privacy and other privacy related claims.

Elements of a Social Media Policy. Though each social media policy must be tailored to a company’s specific needs, some basic common elements often include:

- Employees should be smart and respectful in online communications;
- Employees should not harass, or defame co-workers, customers, products or the employer; or
- Employees should not disclose confidential or proprietary information.

As discussed below, companies should strongly consider providing clarity and definitions regarding phrases used in social media policies.
Labor Law Considerations. In drafting a corporate social media policy, HR professionals should note that an overly proscriptive or broad policy may draw the attention of the National Labor Relations Board (the “Board”). As noted above, the NLRA protects an employee’s right to engage in protected concerted activity, which may include employees discussing terms and conditions of employment via social media. As such, an employer policy (social media or otherwise) will likely run afoul of the NLRA if it categorically prohibits employees from posting concerns or complaints about terms or conditions of employment or the workplace. The mere existence of such a policy, even if it is not enforced, would constitute an unfair labor practice and the law applies with equal force to non-union employers.

In October 2010, the NLRB’s Acting General Counsel took the unprecedented step of issuing a complaint against American Medical Response of Connecticut (AMR), in part, because he believed the employer’s social media policy interfered with its employees’ right to engage in concerted protected activity. The company’s “Blogging and Internet Posting Policy” prohibited employees from “making disparaging, discriminatory or defamatory comments when discussing the Company, or the employee’s superiors, co-workers and/or competitors.” The policy also prohibited employees from discussing the company or its employees on the internet without permission. In the Acting General Counsel’s view, the policy was so broad that it would deter employees from exercising their right to engage in concerted activity. The Acting General Counsel initially commented that he considered employees’ Facebook postings (made while off-duty) the same as if they had taken place around “the water cooler.” Although the case did not go to a hearing or trial, as part of the settlement the NLRB required AMR’s social media policy to expressly state that employees still had the right to discuss wages, hours, and working conditions with co-workers and others while not at work, and that no one would be disciplined or discharged for engaging in such discussions.

It is worth noting that the Acting General Counsel’s view does not necessarily reflect the view of the National Labor Relations Board or the courts. Under the enforcement scheme of the NLRA, the General Counsel has exclusive jurisdiction over whether to prosecute a case and, in deciding whether to do so, must make an assessment of what the law is and how it applies to the situation at hand. If the General Counsel decides to prosecute a case, it will then go before an NLRB Administrative Law Judge (ALJ) whose decision can be appealed to Board.

To date, no social media cases have been decided by the Board whose rulings, if any, in this area will ultimately be reviewed by the federal courts. However, in September 2011, NLRB ALJs applied existing Board law in rendering the first two decisions in social media cases, which had been brought by the Acting General Counsel’s office.
In *Hispanics United of Buffalo, Inc.*, the ALJ agreed with the Acting General Counsel’s position that an employer had violated the NLRA by terminating five employees for comments that they posted on Facebook. The judge ruled that the employees’ Facebook posts constituted protected concerted activity because the posts were between co-workers and were about working conditions. However, the employer’s policies relating to social media were not at issue and the ALJ had no occasion to rule on a social media policy.

The second case—*Karl Knauz Motors, Inc.*—also acknowledged that an employee’s off-duty social media activity could be protected under the NLRA. The ALJ, however, disagreed with the Acting General Counsel regarding the cause of a car salesman’s termination finding that the employer did not terminate a salesman for a protected Facebook post, which was sarcastically critical of an employer’s promotional event. Instead, the salesman was terminated because of a Facebook post making light of a car accident on the lot involving a customer who was injured. This post, according to the ALJ, did not constitute protected concerted activity because it was posted solely by the salesman without any discussion from other employees and it “had no connection to any of the employees’ terms and conditions of employment.” Thus, the salesman was not entitled to reinstatement or back pay.

The ALJ, however, did have occasion to consider the employer’s policies and determined that three of four policies in the employer’s handbook were unlawfully broad. Two provisions of the employer’s policy “clearly would be understood to restrict and limit employees in” engaging in protected concerted activity as the rules would limit their ability “to discuss working conditions with union representatives, lawyers, or Board agents, among others.” Though the third restriction prohibiting employees from “being disrespectful or using profanity or any other language which injures the image or reputation of the [employer]” did not expressly limit protected concerted activity, it was deemed unlawful because employees “would reasonably construe” it as restricting their rights. According to the ALJ, the fourth policy was lawful as it just provided that “employees should not display a bad attitude toward customers,” something which the employer had a right to expect from its employees. As the employer had already eliminated the contested provisions from its handbook by the time the judge made his decision, the ALJ simply concluded that the employer should post a notice that an unfair labor practice had occurred.

It is unclear whether these cases will be appealed to the Board and whether it would uphold all or part of the ALJ decisions. However, these cases demonstrate that the NLRB ALJs believed existing Board law can (and should) be applied to employee social media activity in determining whether an employer’s social media policy infringes upon its employees’ right to engage in protected concerted activity. Unfortunately, these decisions do not provide clear guidance on how to draft an NLRA compliant social media policy, and legal challenges to an employer’s social media policy will vary depending on the facts and circumstances of each case.
Some additional, although limited guidance, was provided in the recently issued “Report of the Acting General Counsel Concerning Social Media Cases.” The Report explained that the Acting General Counsel’s office had filed complaints against employers for policies that were deemed “overly broad” because the policies used phrases that were undefined and could reasonably be interpreted by employees to restrict discussions between co-workers or third parties about terms and conditions of employment. For example, the Acting General Counsel determined that phrases such as “inappropriate discussions,” “private or confidential information,” “inappropriate or sensitive information,” or “personal information about co-workers”, without further definition, are overly broad because they could potentially apply to employee discussions about, or criticism of, the conditions and terms of employment. The Report also took issue with an employer’s policy which restricted employees from using the company’s logo and photos of the store, brand, or product without written authorization, because it could potentially prevent an employee from posting a photo via social media showing the employee picketing in front of the store or wearing a shirt with the logo while protesting terms and conditions of employment.

Many of the Acting General Counsel’s conclusions are disturbingly restrictive, particularly given that the vast majority of rules or guidance in most corporate social media policies is not intended to interfere with employees’ rights under the NLRA. Instead, such policies are calculated to, among other things, protect the company’s brand, limit vicarious liability for employee’s social media activity, and protect co-worker and employee privacy.

Though the Acting General Counsel’s Report provides only minimal guidance on social media policies, it makes the point that the Acting General Counsel wants such policies to be as clear and explicit as possible and that employers should try to provide context or definitions to phrases included in them. Similarly, employers may want to include a provision stating that nothing in the policy is intended to restrict an employee’s rights under the NLRA and that any potential conflict between the policy and the law will be resolved or decided in favor of the employee’s rights under the NLRA. However, the Acting General Counsel has informally expressed some skepticism about whether disclaimer language alone (without appropriate definitions) would be sufficient to legitimize an ambiguous social media policy.

Regrettably, the law in this area will likely remain murky at best for the next few years. Based on the cases thus far and the formal (and informal) statements by the Acting General Counsel, it would appear that if a social media policy would be understood by the reasonable employee to permit protected concerted activity it will not be found invalid.
VII. Conclusion

Social media has the ability to connect and engage people in networks at a pace and on a scale never before seen. As social media use continues to increase, HR professionals can play a critical role by putting in place an effective social media strategy that makes sense for their respective companies. While many aspects of social media technology and law are still in a state of flux, it is not too early for HR professionals to begin shaping policies and practices for a technology that is clearly here to stay.
5 Social Networks/Blogs Now Account for One in Every Four and a Half Minutes Online, NIELSENWIRE (June 15, 2010), http://blog.nielsen.com/nielsenwire/global/social-media-accounts-for-22-percent-of-time-online/.  
7 Id. at 7.  
10 HR Policy Association, Quick Survey on Social Media at Work Q-2, (March 2011).  
12 Id. at 8.  
13 Id at 5, 7.  
14 HR Execls Atwitter at Social Media Roundtable, This Week, HR Policy, July 29, 2011.  
16 Id. at 3.  
23 Id. at 197.  
24 Jobvite, supra note 14, at 15.  
28 Konop v. Hawaiian Airlines, 302 F.3d 868 (9th Cir. 2002) (blogging about the company was protected concerted activity under the Railway Labor Act).  
29 Ahern v. Shinseki, 629 F.3d 49, 59 (1st Cir. 2010).  
30 29 C.F.R. §§ 1635.1–1635.12.
City of Ontario v. Quon, 130 S.Ct 2619 (2010). Employees may claim that the employer’s electronic communications monitoring system is an intrusion on the employee’s right to seclusion or solitude. To succeed on this theory, the employee must prove: (1) the intrusion was intentional, physical or otherwise, (2) upon the plaintiff’s solitude or seclusion or private affairs or concerns, (3) which would be highly offensive to a reasonable person.


16 C.F.R. Part 255, Guides Concerning the Use of Endorsements and Testimonials in Advertising (noting that an employer may be liable for an employee’s endorsement of the employer’s products or services on social media websites, even though the employer does not authorize or approve of the employee’s remarks).

HR Policy Association, Quick Survey on Social Media at Work Q-4, (March 2011).

HR Policy Association, Quick Survey on Social Media at Work Q-5, (March 2011).

HR Policy Association, Quick Survey on Social Media at Work Q-9, (March 2011).

HR Policy Association, Quick Survey on Social Media at Work Q-8, (March 2011).

HR Policy Association, Quick Survey on Social Media at Work Q-10, (March 2011).


Hispanics United of Buffalo, Inc., 3-CA-27872, JD-55-11, Buffalo, NY; Karl Knauz Motors, Inc., 13-CA-46452, JD (NY)-37-11, Lake Bluff, IL.

3-CA-27872, JD-55-11, Buffalo, NY.

Karl Knauz Motors, Inc., 13-CA-46452, JD (NY)-37-11, Lake Bluff, IL.

Id. at 9.

Id. at 10.

Id. at 9-10.

Id. at 11.

Social Media Platforms

This appendix provides a brief description of some of the most popular social media websites. Though there are certainly thousands more, most fall somewhere within the eight broad categories outlined below.

Social Networking –

Social networking allows people to easily form groups and share information based on common bonds, characteristics, interests, locations, and causes. These sites typically focus on facilitating communication between linked communities of users.

Facebook – Facebook is a social networking website that centers on the creation of personalized profiles using a pre-designed template. Through the profile, users make “Facebook Friends” with other users, join groups, post comments, pictures, movies, and links to other websites. Facebook fosters extensive communication by allowing users to comment on what others post. Facebook also has an internal private message and chat system.

Google+ – Google+ is a social networking website similar to Facebook that allows users to create a personalized profile using a pre-designed template. The key innovation which distinguishes this platform from Facebook, is its use of “circles” or friend groups designed to help users more easily control the privacy of their content. Google+ represents Google’s latest attempt to unseat Facebook in the world of social networking, and features full integration with other Google platforms such as Gmail, GTalk, iGoogle, and Google Buzz.

MySpace – MySpace is a social networking website that allows users to create their own profile to share their interests and make friends with other users. Unlike Facebook and Google+, there is not a pre-designed template for profile creation, allowing users to essentially create their own webpage from scratch using tools MySpace provides. MySpace includes its own internal private messaging system.

FourSquare – FourSquare is a location-based social networking website that utilizes mobile phone GPS locations to allow user to share their locations with other Foursquare members. Users ‘check-in’ to different locations allowing them to earn badges, or even become the “mayor” of a location by accumulating more check-ins than other members. Users can also provide tips and comments for others who visit the same venues.

LinkedIn – LinkedIn has coined the term “Business Social Media.” It emphasizes professional networking through the creation of a profile with the aim of providing information to others about your professional career. Users make ‘connections’ with other users in order to foster professional networking.
Blogging –

To ‘blog’ is a term describing the expression of an individual’s thoughts by posting written articles online about any topic for others to read and comment on. A “Blog” (shorthand for “web log”) refers to the type of website where users post these articles. Blogs vary in length, and range from informal journal entries documenting individual experiences, to longer articles of the sort one might find in the opinion section in a traditional newspaper.

Blogger – Blogger is a Blog creation and maintenance website set up by Google with similarities to Google Buzz. Blogger provides users with tools to set up a Blog where users can blog about anything they find interesting. Because Blogger is a Google platform, it features full integration with other Google websites to allow the Blog to be quickly disseminated to other individuals.

Yahoo! Blogs – Yahoo! Blogs are blogs set up by Yahoo users who have questions or topics for discussion. Users post a question and then other users can come in and comment and provide answers.

Wordpress – Wordpress is a program that allows users to create and maintain a website or Blog. Wordpress is unique in that it permits users to create a unique blog page or website customized to fit particular topics.

LiveJournal – LiveJournal allows users to connect with friends share thoughts about a particular topic through posting blogs. LiveJournal allows users to create a customized journal to store private and public information.

MicroBlogging –

MicroBlogging is a form of blogging that allows users to exchange ideas, videos, or links utilizing much smaller communications, usually no longer than a sentence. MicroBlogging is principally about what is happening right now, and tends to be much more rapid and impulse-driven than regular blogging.

Twitter – Twitter provides a microblogging experience through a website where users subscribe to the ‘Twitter Feed’ of another user. Users post messages in their Twitter Feed and the message, or ‘Tweet’ is instantly disseminated to everyone subscribing to the feed.

Google Buzz – Google Buzz provides a MicroBlogging experience similar to Twitter, but utilizes full integration with various popular Google platforms.
Multimedia Sharing –

These sites specialize in storing and streaming large volumes of user-generate content like photos, music or video, among a community of mostly anonymous users. Unlike social networking, the focus of multimedia sharing tends to be more on content than on building communities of friends.

**YouTube** – YouTube is a video sharing website. Users upload videos for the public to view and other users can comment and/or “Like” or “dislike” the videos. Importantly, Youtube has a counter for the number of views each video has received. People have become famous by posting videos that received millions of views.

**Flickr** – Flickr is an image and video hosting website that allows photo and video sharing between users. Flickr includes numerous organizational and editing tools for pictures and videos. Flickr also allows users to give other people permission to add and edit photo collections.

**Picasa** – Picasa is a Google photo and video hosting and sharing website that features full integration with Gmail, Gtalk and Google+. Picasa allows the user to organize and edit their photos and videos and customize who they share them with.

Information Collaboration –

Information gateways provide users with a portal to access information. These portals provide users with easy access to other information based on their choices and preferences.

**StumbleUpon** – StumbleUpon is a ‘website discovery’ website that recommends websites to users based on features and content the user found enjoyable on other websites. It allows its users to discover and rate web pages, photos, and videos that are personalized to their tastes and interests using peer-sourcing and social-networking.

**Reddit** – Reddit is an information and news sharing site where users submit links and content on the internet or create a self-generated post using a pre-made template. Other users then vote the posted links "up" or "down" with the most successful links gaining prominence by reaching the front page.

**Delicious** – Delicious is a bookmark sharing tool. It allows users to access any website that has been bookmarked from any computer. Delicious also permits users to see what others with similar interests and experiences have bookmarked.

**Wikipedia** – Wikipedia is online free-content encyclopedia allowing users to continually update and contribute to articles. It is entirely user-driven and for that reason, information found on Wikipedia should be treated with some skepticism and verified.
Digg – Digg is a news and information sharing site. As users read news and articles around the web, they share them on Digg. Other Digg users are then given access to the information and can choose to “Digg” the story. The more “Diggs” a story gets, the more of a chance the story has to appear on the website’s main page as the most noteworthy of stories of the day. Digg also provides each user with a customized list of news based on their Digg habits.

Virtual Worlds –

Virtual worlds allow users to create avatars or digital versions of themselves that they control in an online, usually animated world. The worlds are deeply detailed and allow for users to progress their character by interacting with others, obtaining items and achievements. Virtual worlds differ from traditional video games in that they take place entirely online and have a unique social system and economies based on both virtual and real-world currencies.

Second Life – Second life allows the creation of an avatar. Controlling the avatar, users can explore the life-like digital world, meet other residents, socialize and participate in group activities, and create and trade virtual property and services with one another. After eight years, Second Life has had over 20 million accounts created.

LiveCasting –

Live casting is the process whereby users stream real-time video content from a recording device, like a video camera or microphone, directly onto the web for others to see. It is used for everything from sporting events, to providing 24/7 surveillance of a particular scene (for example surf websites will often point a camera at the beach to show people how big the waves are at any given time).

Livestream – Livestream is a website that allows users to broadcast and view video content using a camera through an internet connection. Livestream also offers live wireless HD broadcasts using a “Livepack,” described as a satellite TV truck in a backpack. Livestream will also stream live concerts on TV and has local news and weather channels.

Justin.TV – Justin.tv is a website that allows users to stream live video over the internet. User accounts are called channels and other users can tune into a channel to see what each user is streaming live over the internet.
Reviews & Opinions–

Review sites allow consumers and customers to post ratings of products and services. Many major online retailers have extensive consumer reviews that accompany every product’s webpage.

**Yelp!** – Yelp provides a localized guide to help visitors to find the best places to visit, eat at, shop at, and sightsee. Yelp basis its recommendation on the feedback of locals and people who have previously visited to ensure it is providing the best recommendations possible.

**Angie’s List** – Angie’s list provides reviews of contractors and services. What set’s Angie’s list apart is that it requires people to pay in order to post reviews. This is to guarantee the authenticity of the review given.

**Epinions** – Epinions provides user reviews of a wide array of product. Epinions users can even get paid to provide reviews of products.

**Google Reviews** – Google maintains a “place page” for an extremely large number of businesses throughout the world. The place page provides basic information about each company and also includes user generated reviews that are displayed when the company appears as a search result in the Google search engine.