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## Socially Acceptable? Remember the Online World and the Work World May Overlap through Social Media

By [John Koepke](#) and [Jeremy Brown](#)

Where's Mom when you need her the most?

As when you are about to post an unflattering comment to your friends on your preferred social networking site. Such behavior in person *in real time* would bring down the swift (and statistically right-handed) smack of correction.

The way we communicate today — both favorably and unfavorably — increasingly occurs online. Public, permanent and normally one dimensional, a single post or comment can lift up or destroy reputations in a matter of a few keystrokes. The headlines noting social media misuse — including bullying, false postings and harassment contributing to serious angst and, in some extreme cases, to suicide — raise our collective concern.

So, as an employer, if you want to address the potential risks and ensure your employees are engaging in socially appropriate behavior online both at work and off-duty, what are the rules that apply?

Since the use of social media is a relatively new phenomenon, and since the applicable rules are still being developed, we offer a few suggestions to provide some guidance to both employers and employees.

If you are an employer:

- disclose in writing the legitimate interest your company has in monitoring off-duty activities that can affect your company's business interests and employees' job performance;
- disclose in writing that unacceptable conduct even when off-duty (illegal conduct, action tending to tarnish company reputation, action reflecting poorly on the company) may subject employees to work discipline;
- establish a written explanation of the company's perception of social media use and how it may benefit the company;
- disclose in writing the company's intent to monitor work day use of social media;
- disclose in writing that your employees should not expect that storage or distribution of information on company computers and other company-owned electronic devices will be private;
- disclose in writing the company's requirement that employees utilize disclaimers when posting information online indicating that their opinions are their personal opinions and do not represent the company's opinions;
- disclose in writing that employees cannot and should not use social networking sites to discriminate, harass, threaten or

- act inappropriately towards other employees;
- disclose in writing the company's process for enforcing/monitoring proper social media practices; and
- ensure that employees have read and acknowledged by signature each of these social media policies, and keep such signed acknowledgements in their personnel files.

If you are an employee using social media, either at work or elsewhere, understand that:

- with or without the disclosures set out above, your employer may already be monitoring your online activity;
- before hiring you, most prospective employers may "Google" you and may seek access to social media to monitor your on- and off-work statements concerning the prospective or current employer, its products, services and work environment;
- even if you are allowed to use social networking sites during work hours, this privilege does not provide you *carte blanche* to use them as though you are at home in your pajamas;
- your access to or use of trade secrets and proprietary information at work will be subject to additional nondisclosure rules or policies which apply to your use of social networks;
- what you post online should be considered permanent, even where you presume that you have the ability to remove the posted content; and
- what you do and say, however private you intend it to be, may become public and, if so, your job and certainly your reputation may be at stake.

All that being said, for employers who become aware of an employee's inappropriate use of social media, the legal protection for any action you take is significantly bolstered by your providing specific written notice to employees and securing written acknowledgement of that notice.

For employees: remember that Mom may not be there to keep you in line online, but your posts and your use of social networking may have far reaching implications...so think again before you hit "enter." And remember to clean up your room: you weren't raised in a barn.

**Jackson Walker's Technology, Privacy and Data Security, Media,** and **Labor and Employment** groups have substantial experience in advising businesses related to their social media efforts. If you would like more information about social media policies, you may also find the following articles helpful:

**[New Technology, New Traps: How Advancing Technology Advances Litigation](#)**

**[Is it Time to Create a Social Media Policy? Employee Online Postings May Create Liability for Unwary Employers](#)**

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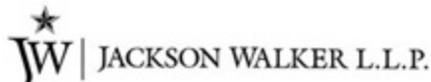
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