

When Social Media Is Bad for Business: Understanding the Legal Risks

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Social media has arguably transformed the way many companies do business, particularly how they interact with the public. However, as the business advantages of this new technology continue to grow, so do the [legal risks](#).

Many of these risks can be traced back to the novelty of the social media phenomenon. While social media issues have started to pop up in courtrooms across the country, there is often little established precedent for courts and businesses to consider. In addition, while some laws have been amended to apply to social media, other aspects of the new technology are largely unregulated. In many ways, social media is still akin to the “wild, wild West.”

The problem is particularly apparent in the field of employment law. Employers are increasingly relying on social media to screen candidates. However, many do not realize that this practice could expose them to liability if their hiring decisions are based on certain “protected” information (age, race, marital status, pregnancy status, etc.) gleaned from Facebook or Twitter. After the practice of asking applicants for their social media passwords caught the attention of lawmakers last month, efforts are now underway to ban the practice.

In addition, the [National Labor Relations Board](#) has come down hard on companies seeking to terminate employees who make disparaging remarks about the company online, particularly if it can be construed as relating to the conditions of their employment. In addition, the Board has also found that social media policies that restrict employees’ use of social media can violate labor laws, particularly when they are so broad that they prohibit the discussion of wages or working conditions among employees.

Other legal risks are caused simply by the speed and reach of social media. One mistake or error in judgment has the potential to reach millions of people in under a minute. While it is possible to delete a post, it almost always leaves behind a digital footprint that can continue to haunt the business. Therefore, companies need to approach social media like any other form of business communication.

The late Steve Jobs, beloved by Apple devotees, even suffered some social media backlash after the release of the iPhone 4. After it was widely reported that the new phone had an antennae issue that occurred when the user’s fingers were placed in a certain location, Jobs’ curt response was plastered all over the Internet. Rather than acknowledging users’ frustrations, he offered this advice: “Don’t hold your phone that way.”

In the same vein, social media has the ability to put a company’s legal troubles front and center. While it can provide a forum for a company to defend itself, adversaries can also use it to bolster their position and rally public support.

Chick-fil-A is facing this problem in its legal dispute with a Vermont folk artist named Bo Muller-Moore. He sought to trademark his phrase “Eat More Kale,” which the fast food chain claims infringes on its slogan “Eat mor chikin.” Since sending a cease and desist letter to Muller-Moore, Chick-fil-A has suffered a social media backlash, with most characterizing the dispute as classic case of the “big guy” trying to push around the “little guy.” On Facebook, thousands of

fans have flocked to the [Eat More Kale](#) page to offer support. In addition, the hash tag [#eatmorekale](#) has become prominent on Twitter. Of course, these are just a few of the legal challenges involving social media. I expect that additional problems will continue to surface as the court system struggles to catch up with the speed of technology.