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Managing the Digital Workforce



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Social Networking Is Just Life

- Facebook has over 750 million users worldwide
- Twitter has more than 300 million users
- Last year the U.S. population was more than 310 million



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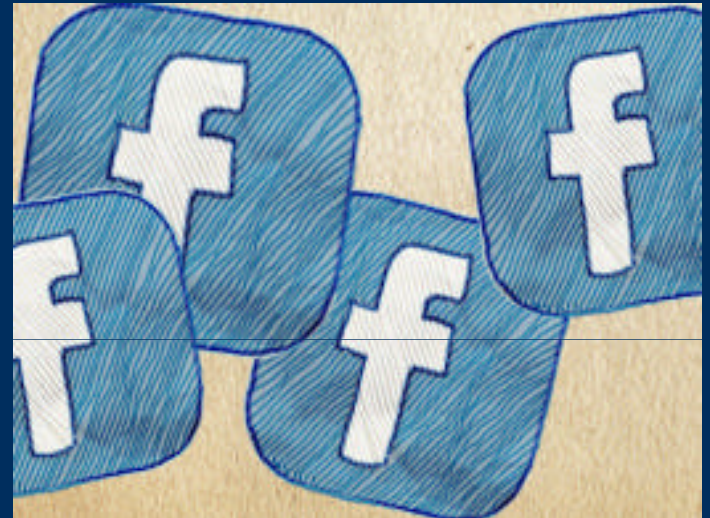
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Social Networking Is Just Life

- Over 50% of users log onto Facebook daily
- More than 30 billion items are shared monthly on Facebook
- Twitter reports 1 billion tweets per week



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Social Networking Is Business Too

- Since social plug-ins launched in April 2010, an average of 10,000 new websites integrate with Facebook every day



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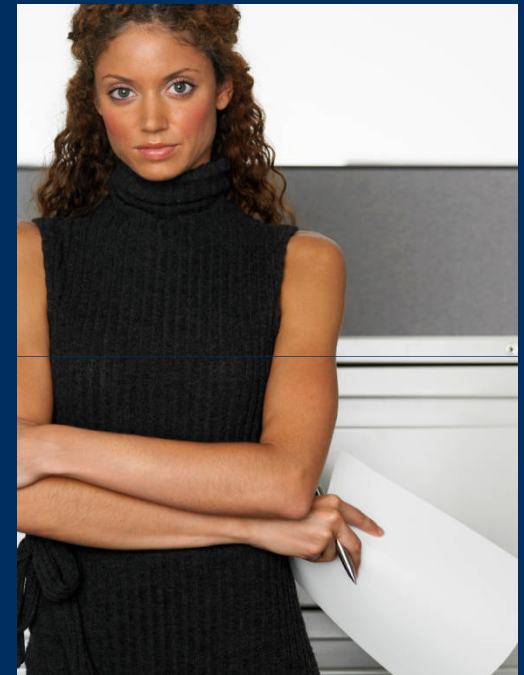
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Employers Lag Behind

- According to a *WSJ* survey, only 26% of employees said their employer had a policy regarding social networking



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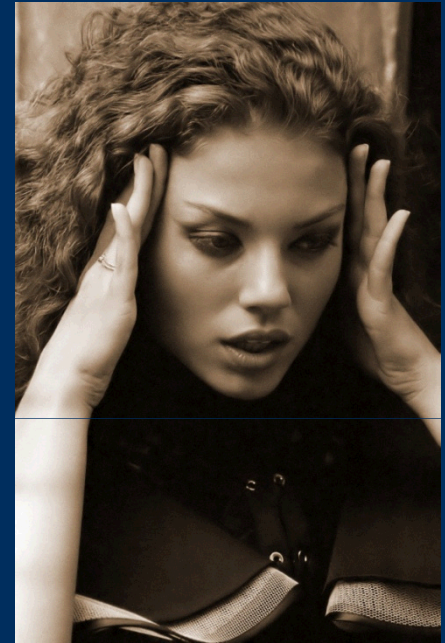
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Employee Disconnect

- According to one survey, 27% of employees admit they don't consider the ethical consequences of posting to social networks.
- More than one-third indicated that they rarely or never consider what their boss (37%), colleagues (37%) or clients (34%) would think



(source: Deloitte LLP 2009 Ethics & Workplace Survey)

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Social Networking Legal Issues

- Social networking raises issues with pre-employment screening, supervision and discipline, and harassment
- Interrelated are issues dealing with monitoring of electronic communications
- The legal environment is dynamic and requires swift adaptation

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Pre-Employment Screening on the Internet and Facebook

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Prevalence of Internet-Based Screening

- Internet research is used in the majority of hiring decisions today, particularly the basic Google search
- Nearly half (45%) of employers used social networking sites to screen applicants in 2009, a 22% increase over 2008

(source: Careerbuilder.com)

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Results of Social Networking Screening

- 53% of survey respondents rejected candidates due to the posting of provocative or inappropriate material
- 44% rejected a candidate due to content showing the candidate drinking/using drugs
- 35% rejected candidates for bad-mouthing their previous employer, co-workers or clients

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If You Can't Beat Them, Join Them

- Employers cannot be faulted for wanting to use the internet to screen applicants
- Facebook is a window into the souls of prospective workers, and the view is dark in many cases . . .

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People ▾

Search

Home

Mail ▾

Profile ▾

Friends ▾

Music

Video

More ▾

Mary Jane ▾

Lite ▾

My Account

Sign Out



Mary Jane

They say you can't drink or smoke the good stuff at work!!! What they don't know won't hurt em'. **Mood:** sneaky 🤪 at 6:42 PM Jun 3

[view more](#)

View My: Photos Videos

21 / Female
Dallas, Texas, US
Last Login: 6/8/2009

Online Now!



www.myspace.com/478715749

[Send Message](#)

[Add Comment](#)

Interests

General



Music



your only as strong as
the tables you dance on
THE DRINKS YOU MIX
& the friends you roll with.

Movies

Half Baked, The Friday movies, Dazed and Confused. Really, anything that makes high better.

Status and Mood

Mary Jane They say you can't drink or smoke the good stuff at work!!! What they don't know won't hurt em'.

Mood: sneaky 🤪 at 6:42 PM Jun 3

Mary Jane Partying till I have to go to work!!!!

Mood: drunk 😊 at 6:38 PM Jun 3

Mary Jane has joined MySpace!

Mood: good 😊 at 2:05 PM Jun 2

[View More](#)

Activity Stream

Jun 05

Mary Jane Asher added a new photo to the My Photos album.



Twitter Trouble

Cisco Fatty

How to Lose a New Job with 1 Tweet

[Ads by Google](#) [Colgate Job](#) [Cisco System](#) [Cisco News](#) [Cisco Images](#)

Ruin a “Fatty Cisco Job” with 1 Tweet

Witness someone ruin a “Fatty Cisco Job” with a single post on Twitter, and become an overnight Internet sensation.

A potential Cisco applicant [tweeted this](#) earlier today:

Cisco just offered me a job! Now I have to weigh the utility of a fatty paycheck against the daily commute to San Jose and hating the work.

Tim Levad at Cisco saw the Tweet, and tweeted back:

Who is the hiring manager. I’m sure they would love to know that you will hate the work. We here at Cisco are versed in the web.



Cisco Fatty

This went viral overnight and is becoming a very hot Trend.

<http://bhc3.wordpress.com/2009/03/17/how-to-tweet-your-way-out-of-a-job/>

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Primary Legal Issue: Discrimination Rules Still Apply

- Same discrimination rules apply
- Ignorance is bliss
 - Not knowing about protected categories is the best defense in failure-to-hire cases
- Software may be tracking which Facebook pages are reviewed by hiring managers

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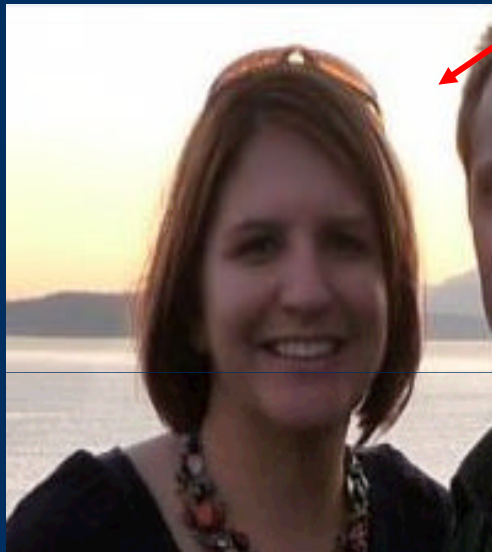
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Employment Screening Tool?

RACE



[View Photos of Me \(65\)](#)
[Edit My Profile](#)

[Wall](#) [Info](#) [Photos](#) [+](#)

[Edit Information](#)

Basic Information

Networks:	UNC Alum '06
Sex:	Female
Birthday:	April 27
Hometown:	Columbia, SC
Relationship Status:	Married
Political Views:	Tree-Loving Conservative
Religious Views:	Christian

Marital Status

Political Views

Religion

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Employment Screening Tool?

Education and Work

Grad School: UNC '06
J.D., Law

College: Eckerd College '03
Political Science, International Relations

High School: Eastview '00

Age



Relationship Status: Single

Interested In: Men

Looking For: Dating
A Relationship
Networking

**Sexual
Orientation**



Basic Information

Sex:

Birthday:

Hometown:

Children:

Parents:

Siblings:

Relationship Status:

**Familial
Responsibility**



National Origin



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Avoiding the Pitfalls

- If using social networking for screening, be consistent and use it for everyone
- Consider giving notice in writing that you search internet or social networking sites
- If search reveals information that plays a part in hiring decision, keep copy of information and consider giving candidate opportunity to address the information

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Avoiding the Pitfalls

Be mindful of obligations under:

- Fair Credit Reporting Act
- State background check laws
- Stored Communications Act

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Social Networking and Discipline

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A Gold Mine of Information for Employers

- The internet, and social networking sites in particular, present a gold mine of information for employers looking to monitor the workforce
- Examples . . .

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Halloween Party

- An intern at a bank sent his boss the following e-mail:

“I just wanted to let you know that I will not be able to come into work tomorrow. Something came up at home and I had to go to New York this morning for the next couple of days. I apologize for the delayed notice.”

- His boss responded the next day:

“Thanks for letting us know – hope everything is ok in New York. (cool wand)”

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Halloween Party

- His boss also attached a photo from the intern's Facebook page
- The boss blind copied the entire bank on his reply so that they would all know that the intern skipped work to go to a Halloween party



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Discipline Issue No. 1: Consistency

- If you use social media to discipline or terminate an employee, you must be consistent
- Case in point – Delta Airlines flight attendant blogger



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Discipline Issue No. 1: Consistency

- Delta dismissed a female flight attendant after discovering “inappropriate” photographs of the employee in her Delta uniform posted on her blog
- The flight attendant sued Delta alleging, among other things, sex discrimination because Delta purportedly failed to discipline male employees who maintained blogs containing similar content

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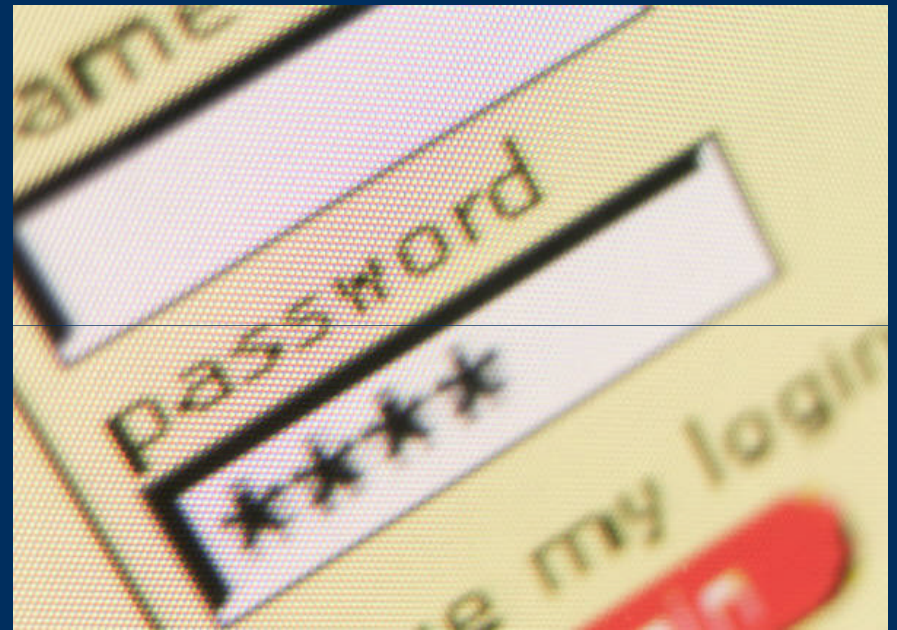
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Discipline Issue No. 2: Coercion

- You cannot coerce employees to give you access to social media for monitoring purposes
- I.e., you cannot force employee to provide passwords or log-in credentials



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Discipline Issue No. 2: Coercion

- *Pietrylo Case:*
 - Password-protected forum for employees
 - Management requested access
 - Employees terminated based on content found on blog
 - Jury found in favor of employees



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Discipline Issue No. 3: Retaliation

- Employers may not discipline employees in retaliation for protected activity
- Certain forms of disparaging speech may be protected



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Discipline Issue No. 4: Off-Duty Conduct

- California and approximately 27 other states prohibit discrimination based on lawful off-duty conduct
- Off-duty conduct, even though embarrassing, may not be used to discipline an employee unless it falls within certain parameters

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Discipline Issue No. 4: Off-Duty Conduct

- Off-duty conduct subject to discipline:
 - Unlawful conduct
 - Publishing trade secrets / confidential info.
 - Misrepresentations regarding the business
 - Inappropriate use of company name/logo

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Discipline Issue No. 4: Off-Duty Conduct

- Off-duty conduct potentially not subject to discipline:
 - Alcohol consumption
 - Promiscuous behavior
 - Unpopular political views

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Discipline Issue No. 4: Off-Duty Conduct

Caution:

- National Labor Relations Board is scrutinizing discipline for social-media postings as a possible violation of employees' right to engage in “concerted protected activity”

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Discipline Issue No. 4: Off-Duty Conduct

Different results in similar cases:

- *AMR*: NLRB complaint against employer who fired ambulance worker for derogatory Facebook posts about supervisor; settled
- *Hispanics United*: NLRB complaint against employer who fired five employees for Facebook posts about working conditions; pending
- *Ariz. Daily Star*: termination of employee for inappropriate/offensive tweets was lawful

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Social Networking and Harassment

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Social Networking As Harassment

- Employees will offend one another with wall posts, pictures, etc.
- This is off-duty conduct but should be addressed to the extent it:
 - Interferes with workplace; and/or
 - Violates policies prohibiting discriminatory or harassing behavior towards co-workers

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Social Networking As Harassment

- Supervisor posts are more likely to be a legal problem
- Issue is not only harassment but also evidence of discriminatory animus
- Plaintiffs' attorneys look at decision makers' Facebook pages

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Derrick v. Metro. Gov't of Nashville

- Supervisor accepted “friend” invitations from subordinates
- Supervisor then posted comments on his wall:
 - *“What is wrong with women these days?”*
 - *“Chicks seem to have more issues these days than Jet Magazine, and keep up more drama than daytime TV and Jerry Springer combined.”*
- Female terminated by this manager sued for sex discrimination relying on the Facebook post as evidence of discriminatory intent

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Avoiding Harassment Claims

- Caution managers on pitfalls of becoming “friends” with employees on social networking sites:
 - Could become part of harassment or discrimination claim even though a “personal” page
 - Diligently use privacy controls to manage flow of information
 - Train employees on various ways they can get in trouble for things they say, tweet, or post on Facebook

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Policies

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Importance of Policies

- Social networking and blogging should be incorporated into conduct policies
- The challenge is that policies are not one-size-fits-all given the various levels of tolerance employers will exercise

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Zones of Regulation (or Non-Regulation)

**At work about
business issues**

**At work about
personal issues**

**At home about
business issues**

**At home about
personal issues**

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At Work – Personal Issues

- Policy likely should mirror personal e-mail policy
 - Choose between “use in moderation” and complete ban
 - The complete ban presents some consistency in enforcement challenges
- If tolerate some personal use, absolutely need rules on appropriate use and frequency of use

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At Work – Personal Issues

- Eliminate any potential expectation of privacy
 - Indicate whether personal password protected e-mail accounts are included
- Uniformly enforce the policy
- Ensure managers/supervisors do not provide conflicting information regarding enforcement

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At Work – Business Issues

- Policies regarding business-related social networking can be more restrictive than personal blogging policies:
 - Only authorized employees may speak on behalf of the business online
 - Employees must comply with all corporate ethics and communications policies
 - Employees must be respectful and polite
 - Prohibit publication of material that would be offensive to customers, potential clients, vendors, etc.

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At Home – Business Issues

- Hours-worked issue presented by at home social networking for the benefit of the business
- Same issue for e-mail and other work from home
- Increased smart phone usage gives employees access to business e-mail 24/7

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At Home – Business Issues

- To minimize the risk:
 - Address “home work” in policies directed to non-exempt employees
 - Train supervisors to identify “home work” that is uncompensated and address it properly
 - Limit remote access options for non-exempt employees

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At Home – Personal Issues

- This is the most problematic zone to regulate
- Policy must account for off-duty conduct laws, privacy considerations, NLRA, etc.
- Policies that go too far will generate litigation

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At Home – Personal Issues

Problematic?

- Disparaging statements regarding company
- Statements that put company in a bad light
- Unprofessional behavior

Safe?

- False statements
- Disclosure of trade secrets
- Unauthorized representation of company
- Discriminatory or harassing conduct

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Putting It All Together – Key Policy Provisions

- Broad coverage of policies
 - Facebook, Twitter, LinkedIn, blogs, etc.
- Savings Clauses
 - Company respects rights of employees to express themselves appropriately

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Putting It All Together – Key Policy Provisions

- Strict prohibitions against:
 - Using company e-mail address or company phone numbers without permission
 - Posting information that violates any company policies against misrepresentations, harassment, discrimination, etc.
 - Posting picture or likeness of any employee, vendor, customer, product, or private property, without permission

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Putting It All Together – Key Policy Provisions

- Other policies apply as usual, including:
 - Non-disclosure policies
 - Safeguarding company property
 - Harassment and discrimination
- No expectation of privacy in use of social media

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