

Social media and HR— friends or foes?



Introduction

Social media is making a huge impact on the way we use the Internet, communicate with friends and family, network with business colleagues, gather information, and make decisions. Years ago, it seemed uncertain whether social media might be a passing fad driven mostly by the younger generations. Today, it's clear that social media is here to stay, though it will continue to evolve and change. Popular platforms have gained users across generations, and social media sites and applications are being adopted as tools in the business world.

Social media by the numbers

90% of businesses **utilize social media tools** for business purposes.¹

41% of employers **monitor employee use of social media** at work.²

71% of businesses **have taken disciplinary action against an employee** over social media.³

78% of recruiters **have made a hire** through social media.⁴

42% of recruiters **have reconsidered a candidate** based on something found on social media.⁵

56% of Millennials **would refuse a job that forbids social media** at work or ignore the policy.⁶

In business, social media can provide unique opportunities to promote products and services, find and recruit talented employees, and deliver an interactive customer experience. But there are also risks, such as the potential to damage the company's reputation and brand, lose intellectual property, or invite lawsuits by employees, job applicants, or customers.

From an HR perspective, it can be hard to tell if social media is your friend or your foe. But one thing is clear: The time to adopt social media strategies and policies for your business is right now.

¹ Proskauer Rose, LLP, "Social Media in the Workplace: Around the World 3.0," 2014.

² Proskauer Rose, LLP, "Social Media in the Workplace: Around the World 3.0," 2014.

³ Proskauer Rose, LLP, "Social Media in the Workplace: Around the World 3.0," 2014.

⁴ Jobvite, "2013 Social Recruiting Survey Results," 2013.

⁵ Jobvite, "2013 Social Recruiting Survey Results," 2013.

⁶ Jon Hyman, "Workplace Social Media Policies Must Account for Generational Issues," Workforce, February 7, 2013.

Twitter

Over 200 million accounts⁷

Twitter is a microblogging tool that allows you to broadcast “tweets” of 140 characters or fewer to your followers. Tweets can also be found by anyone through the search function.

Twitter as HR’s friend:

- Follow the top HR experts to benefit from their thoughts and research.
- Send a tweet asking your network for prospective job candidates.
- Find out what’s taught at HR conferences and events you can’t attend.
- Stay up to date with compliance issues and legislative changes.
- Visit <http://search.twitter.com> to search for issues, people, or trends in HR.
- Use Yammer, a tool similar to Twitter that creates a private, employee-only microblog.

Twitter as HR’s foe:

There are a couple of potential drawbacks to using Twitter in the workplace. First, with only 140 characters, it’s hard to thoroughly explain what you mean. Tweets are often designed to stir up controversy or otherwise engage an audience—after all, you’re hoping to get people interested enough to follow a link or retweet. If you say the wrong thing, Twitter can blow up quickly with negative comments and brand-damaging feedback. Second, Twitter is in real time, and it doesn’t take long to fire off a tweet. Too many people have reacted with a tweet in anger or indignation, only to regret what they said (seconds) later.



How can HR support the business in pursuing social media opportunities?

Is your company using Facebook, LinkedIn, Twitter, YouTube, or one of many other social media platforms to communicate with prospective and existing customers, business partners, or the general public? If not, it soon will be, and it’s a good bet your competitors already are. While social media has not replaced traditional forms of communication, it is changing the online experience that many of your company’s customers and partners expect.

Human resources professionals can make use of these technologies to improve recruiting and retention, employee engagement, and training within the organization. You can also use social media to build a reliable network of experts that can help you stay up to date with the latest trends and thinking in compliance, HR, recruiting, and/or payroll.

But there’s another role for HR to play with social media as well—that of advisor to other business units within the company that are also dipping their toes (or diving head first) into social media. It is important for the HR team to become a trusted consultant to customer-facing departments such as marketing, sales, public relations, and customer support. These departments are likely to be among the first to make use of social media, and the managers of these business areas need your help to keep an eye toward legal compliance and business risk.

⁷ Company blog, posted 3/14/11

LinkedIn

300+ million registered worldwide users⁹

LinkedIn is a business networking tool to connect with colleagues, maintain an online resume, make and receive professional recommendations, and “follow” influential people in business or your industry. It is the social media most used by recruiters.⁸

LinkedIn as HR’s friend:

- Ask employees to help you find great job candidates using their LinkedIn networks.
- Search for prospective candidates by past or present employer, industry, geographic area, job titles, keywords (skills, credentials), and more.
- Join groups of HR professionals and be able to ask questions, share ideas, and learn.
- Keep up with HR organizations like your state SHRM chapter.
- Post open job announcements.

LinkedIn as HR’s foe:

LinkedIn is mostly used by businesspeople for business networking; however, some labor law specialists are cautioning employers about the recommendations feature. The problem? If you fired the employee for performance and other employees (or his manager) sing his praises on LinkedIn, it may be used against you in a wrongful termination lawsuit. If your organization has a policy against making endorsements, make sure it clarifies whether LinkedIn recommendations are allowed.



How can HR help the business avoid the social media pitfalls?

Social media may be necessary for businesses, but it is not without risk. In fact, many HR professionals are hesitant about getting started with social media because there are many unanswered questions that are currently being considered by courts, legislatures, and government agencies like the National Labor Relations Board (NLRB).

Social media is especially difficult from a recruiting perspective. On one hand, social media empowers you to recruit passive candidates like never before, reviewing resumes (LinkedIn), staying in touch with potential candidates, and tapping social networks to spread the news about current openings. On the other hand, think of all of the forbidden knowledge about a candidate you might inadvertently learn if you view his or her social media profiles. This includes characteristics such as: age, ethnicity, religion, pregnancy, whether the applicant has children, political leanings, and much more.

Consider these scenarios and the implications involved for human resource departments:

- You search for a job applicant on Facebook and notice photos of the applicant smoking cigarettes or marijuana. The applicant wears a hijab, Star of David, or a cross in some of the photographs.

Have you just answered a question you wouldn’t be allowed to ask in an interview?

⁸Jobvite, “2013 Social Recruiting Survey Results,” 2013.

⁹LinkedIn company statistics, <http://press.linkedin.com/about>, accessed 7/11/2014

- You hire a subject matter expert to build a following on Twitter that your company hopes to cultivate into customers and product advocates. He uses his own name for the Twitter account, for example @FredSmith. A year from now, Fred will leave the company and start his own firm.

Who owns this online “persona”—your company or the employee?

- An employee posts disparaging remarks about her supervisor or the company on her personal blog.

Do you have the right to terminate an employee for personal use of social media?

- An employee tweets untrue allegations about a competitor that are potentially damaging, using the business Twitter account.

Is your company potentially guilty of defamation or libel?

- A manager at your firm uses a company-issued smartphone to post sexually explicit photos to a personal Facebook account. Some of the manager’s subordinates are “Friends” on Facebook and will see the photos.

Could this be grounds for a sexual harassment lawsuit?

- An employee divulges proprietary information or intellectual property through a social media channel.

Is there any way to recover information that might have been shared publicly through a social media network?

- Your in-house recruiter develops a large network of professionals on company time, using LinkedIn. Your company uses this network as its primary candidate pool for open positions. (This also happens when a sales executive develops a network of potential customers.) This sticky issue is known as portability, and it is the subject of current litigation.¹⁰

If your recruiter leaves, does your company have any rights to her network?

As you can see, there is a lot for HR professionals to keep up with concerning this rapidly changing area of business. Upcoming court cases, settlements, and agency guidance may have serious implications for how companies can use social media and in what ways companies can or cannot control employee misuse of these technologies. It’s up to you to protect your business by educating yourself on the issues and removing as much uncertainty as you can by creating solid, compliant social media policies.

¹⁰ Ed Frauenheim, “Special Report on Social Media: You Can’t Take Your Online Contacts With You ... or Can You?,” Workforce Management, June 2011, pgs. 32-34, 36-37.

Facebook

Over 1 billion monthly active users¹¹

Facebook is a social networking site that enables users to create a personal profile, link to their “friends,” post status updates, use applications, exchange private messages, and “like” products, companies, and causes, among other things. Businesses can set up customer-facing Facebook profiles to interact with customers and prospects.

Facebook as HR’s friend:

- Create private Facebook groups to engage employees and encourage interactive teamwork.¹²
- Design a company Facebook page to appeal to prospective employees.
- If Facebook (or other social media) will be used as background screening for job candidates, consider hiring an outside firm or training an employee who is outside the hiring chain to perform the background check and provide a sanitized report to hiring managers.¹³

Facebook as HR’s foe:

Like many social media platforms, Facebook can be used for bullying and malicious insults. It has already been the subject of many adverse employee actions and lawsuits. In one example, a supervisor on probation was terminated for noting on employee Facebook pages that the employees had called in sick and were actually out having fun!¹⁴ In other cases, Facebook has been used to sexually harass employees.

Facebook has also been involved in many wrongful termination suits in which employees made disparaging remarks about supervisors or the company and were later fired. At issue in these cases is whether the employee may be engaging in protected speech about work conditions or compensation, as protected by the National Labor Relations Act.



How to create a social media policy

When you create a social media policy, you’ll want to recruit your legal counsel to help draft and review it. Someone with legal expertise needs to help you keep up with the rapidly changing body of legal precedence surrounding social media and employment law.

Next, create a cross-departmental team so that all the important stakeholders for social media at your company will have a voice. At the very least, you will want your team to include a representative from sales, marketing/public relations, customer service, HR, legal, and management.

Have departments make a list of all the ways they are using social media and any plans they have to use it in new ways. This will help ensure that you look at the issues from the right perspectives. Human resources should also contribute examples about how employee use of social media (personal and business use) could potentially put the company at risk. Provide examples from other businesses and legal cases.

¹¹ Facebook company statistics, <http://newsroom.fb.com/company-info/>, accessed July 11, 2014

¹² Jon Hyman, “Social Media Background Checks as Discrimination,” *Workforce* blog, November 25, 2013.

¹³ Meredith Levinson, “Introducing the Safe Social Media Background Check,” *CIO*, May 20, 2011.

¹⁴ *Rodriguez v. Wal-Mart Stores, Inc.*

As you create a social media policy, it might be helpful to have some examples and guidance. There are many resources for this you can find online. Here are a few:

- Ralph Paglia, “Social media employee policy examples from over 100 organizations”¹⁵
- SHRM, “Polish your social media policy”¹⁶
- Inside Counsel, “Technology: The ten best practices for drafting a lawful social media policy”¹⁷

Although the following list should not be considered exhaustive, here are a few things you should consider as you draft social media policy:

- **Personal conduct**—When employees use social media in their personal lives, how will they be allowed to speak about the company and other employees, including their boss?
- **Access**—Will employees be able to use social media for personal purposes at work? Or only for business purposes? Will the company do anything to actively block social media sites?
- **Portability**—What happens when employees leave who were part of the company’s social media operation? One important way to build an online audience is to become an “influencer”—someone who is respected as an authority in an industry or field. If your company hires an influencer (or develops one internally), clarify who owns the work product (blogs, articles, and so on) and who owns the online persona.
- **Company monitoring**—Is the company going to monitor personal social media activities of employees? Hire an outside firm? Will you deal with issues if they are brought to your attention but not actively look for problems? What should an employee reasonably expect for privacy?
- **Recruiting and hiring**—Can recruiters or hiring managers check out a candidate’s social media sites prior to interviewing/hiring/onboarding? Should you hire a third-party company to conduct background checks that include social media?
- **National Labor Relations Board (NLRB) compliance**—Do your new policies comply with applicable regulations? Be sure to consider the National Labor Relations Act (NLRA) as it applies to your business, since the NLRB has been very active in social media issues. You can find fact sheets and summaries of past cases at the NLRB website. This continues to be a very active area of new employee lawsuits.
- **Employee disciplinary procedures**—How will the company remediate when the policy has been broken? How will you ensure that the rules are applied consistently to all employees?
- **Branding**—How can you ensure that social media content remains consistent with the branding standards and corporate “personality” that has been developed by the marketing department?
- **Copyright**—Understand the intellectual property laws involved in curating social media content (linking to or reposting parts of the work of other people or organizations). Train employees how to stay on the right side of copyright laws.

¹⁵ Ralph Paglia, “Social Media Employee Policy Examples From Over 100 Companies,” Social Media Today.

¹⁶ Aliah D. Wright, “Polish Your Social Media Policy,” SHRM, August 1, 2013.

¹⁷ Heather Melick and Ethan Wall, “Technology: The ten best practices for drafting a lawful social media policy,” Inside Counsel, March 14, 2014.

YouTube and Instagram

YouTube has more than 1 billion unique users per month¹⁸

Instagram has 200 million monthly active users¹⁹

YouTube is a social video sharing application, owned by Google. YouTube users upload over 100 hours of video (both professional and amateur) every minute. Viewers can subscribe to “channels” to find new videos on topics of interest or created by favorite videographers.

Instagram is a social photo sharing application. Users can take photos, apply artistic filters, upload them to Instagram, and share them with their social networks. The company was purchased by Facebook in 2012.



YouTube and Instagram as HR’s friend:

- Create a video that introduces your company to prospective job applicants and interviews current employees about what it’s like working for your company.
- Use a video to recognize an employee for an outstanding contribution.
- Share photos reflecting your company’s culture and employees that would be interesting to prospective job candidates.

YouTube and Instagram as HR’s foe:

Remember that cameras are in every smartphone and tablet device. You don’t want the wrong photos or videos representing your organization. Make sure you have a signed release if you are featuring photos or videos of identifiable people, whether they are employees in your organization or not. Also, remember any photos posted by your organization need to be reflective of your corporate brand. It is good to have fun and get creative, but don’t allow any unprofessional or obscene photos.

Customers and employees may film at any time and possibly for malicious reasons. Even if your company were able to sue for libel, the damage is done. Employees might catch other employees in embarrassing moments. Disgruntled workers might film things that could be damaging when seen by the public, for example, roaches in a restaurant. It’s best to train employees to conduct themselves professionally at all times.

Should your company monitor social media?

There are two ways that companies monitor social media: employee use and public mentions. The former is done by the majority of companies. The latter should always be part of a corporate social media strategy.

Nearly 60% of companies monitor their employees’ use of social media at work. If your company policy allows for unlimited usage of social media at work for personal reasons, then there might not be much need for monitoring. If you expect employees to only use social media at work for business purposes, then your organization will need to monitor employees, at least to the extent they are using company-owned devices (laptops, desktops, tablets, and phones).

¹⁸ YouTube company statistics, <https://www.youtube.com/yt/press/statistics.html>, accessed July 11, 2014.

¹⁹ Instagram company statistics, <http://instagram.com/press/>, accessed July 11, 2014.

Companies should have a system for monitoring social media sites for mentions of the company and its products. This can be accomplished automatically through a variety of tools, but someone in the organization must be responsible for reading the results and determining any needed actions. Such person(s) usually work in the public relations or marketing team.

But is there a reason for HR professionals to monitor the “buzz” about their organizations? Absolutely! Being an employer of choice is an important way to ensure that your company is well-positioned to attract future talent. It’s important that you know how employees, ex-employees, and prospective candidates are talking about your organization. Monitor how your company is perceived in its industry and its geographical and online communities and get involved and engaged in the conversation.

You also need to be aware of how employees are treating one another on social media. While you may not actively monitor employees, if you hear about a potential problem, you should check up on it. Employees have used social media to sexually harass, discriminate, bully, and generally embarrass one another. In some cases, managers have behaved in the same ways! Don’t make the mistake of ignoring these behaviors if they occur “off the clock” on an employee’s “personal site.” These kinds of activities can and frequently do become the subject of employee lawsuits.

Google+

Over 1 billion registered users.²⁰

Google+ is the second-largest social media network after Facebook. Users can create multiple “circles” or networks of people. For example you might have a circle of professional colleagues, circles of immediate and extended family, friends, and so on. Google+ also offers live video chat technology known as Google “hangouts.”

Google+ as HR’s friend:

- Conduct live Google+ hangouts for employees to conduct training or host “ask the executive” type of meetings.
- Create networks of prospective passive candidates for recruiting.
- Set up a company Google+ profile that people can follow to interact with your recruiters or other professionals.
- Establish groups (known as Google+ circles) of employees who have common interests either to form virtual teams at work or special interest social groups (hobbies and so on) outside work.

Google+ as HR’s foe:

Some people have voiced privacy concerns about Google+ and find the integration between so many Google owned apps can be intrusive. Through extensive built-in integration Google uses its many applications to populate information in Google+. For example, anyone who signs up for a Gmail or YouTube account automatically gets a Google+ profile. Check settings and opt out of some types of sharing if you find that the integration bothers your standards of online privacy.



²⁰ Tina Courtney-Brown, “The Latest Google+ Stats Show It’s a Powerhouse Site,” SiteProNews.com, February 5, 2014.

Conclusion

Social media is in everyday use in the business world, and that's not going to change. As companies explore the uses for social media in their sales, marketing, public relations, human resources, and customer service departments, it's essential that clear company policies exist to help guide employees about the proper use of these technologies.

Social media provides new opportunities to interact with customers, establish organizations as industry leaders, and recruit great employees. It also presents potential challenges in the forms of employee misuse, lost productivity, adverse employee actions, employee lawsuits, and damage to your company's reputation.

HR professionals need to take a leading role not only in determining their own use of social media, but also in protecting the company from social media risks. Along with your legal counsel, review your organization's social media policy at least once each year. Make adjustments as needed when employment laws, NLRB guidance, or the technology itself changes.

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