



***Internet and Technology Usage in the Networked Workplace:
Legal and Human Resources Implications***

Part 2

**7th Tourism Human Resources Conference
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I'm singing the "Take this Job and Shove it" blues today

Think before you tweet - It's no joke

Here's an example why you should think before you post:

Joe thought it would be funny to post a comic strip of him having a bad day at work on Facebook. Joe is friends on Facebook with work colleagues and even a few clients.

The comic was circulated at work and got back to Joe's manager, which prompted an unexpected conversation about why Joe wasn't happy with his job.

Also, a client who saw the comic commented that maybe he should find a representative who was "in a better frame of mind."



Topics

- A networked workplace
 - HR Benefits
 - Challenges

- Managing Risk
 - Primary Risks
 - Tools for Managing Risks

- Practical examples

- Appendices
 - USA Case
 - Sample policy phrasing

A Truly Networked Workplace

- Intranet
 - Global & regional sites
 - 'Connect' site with moderator

- Global Crossing
 - Teleconferencing

- Global Linx / Web Alliance
 - Visual communication

- Remote data access
 - Laptops / Virtual Private Network keys
 - Smart phones / iPads
 - Coming – BYOD

Networked Workplace - Some Benefits

- Job interviews / Employment screening
- Global compliance (and learning)
 - Virtual campus from home or work
- Policy libraries
- Meetings
 - Global, regional, local - Business, Management, Team, Project teams, Townhalls
 - Electronic calendars; Share points
- Web based performance enablement
 - Also compensation administration (guides, portals)
- Global Appeals process
 - Employee Ombudsman
- Global Programs
 - Employee Care
 - Recognition
 - Voluntary activities (Wellness, Volunteer grants, Environmental care, Diversity)
 - Celebrations - information sharing

Networked Workplace – Some Challenges

- Managing across borders:
 - Virtual reporting - cross jurisdictional & matrix reporting
 - Finding the balance - different laws, norms, cultural nuances
 - Respecting time - different time zones, culturally acceptable meeting times
 - Prioritizing between global & local workplace demands
 - Reporting restrictions - straddling between manual & sophisticated data systems
 - Virtual workspace – working remotely, hoteling

- Communicating effectively:
 - Different accents, speed, volume, laughter, cross talk
 - Global grapevine
 - Mobile devices - distractions during meeting / conversations

- Impact of technology on how work is organized & approaches to staffing

- Implications for unionization
 - Global federations / sectors
 - Cross border collaboration
 - Implications for collective bargaining
 - Global / sub regional industrial action (Fast Foods industry)
 - Messaging & brand impact

Two Major Areas of Legal / Industrial Relations Risk

- First major risk:
 - Increased opportunities for Confidentiality of company, client & employee information to be breached

- Second major risk:
 - Traditional IR principle is that the employee's off duty conduct is not relevant to the employer unless the boundaries of the employment relationship are crossed
 - Media / Social Media in the workplace has increased the risk that off duty conduct **or** conduct during working hours can adversely impact the employer
 - This risk can arise both through the employee's use of the company's equipment or own equipment
 - Coca Cola case : employee accident using smart phone resulted in US\$20 MM award of damages

Managing Information & Conduct Risks

- Code of Conduct – specific reference to use of Social Media
- Restrictions on connecting to company network remotely
- Encryption
- No access to personal email id
- Prohibition on sending company email to / from home computer
- Clear Desk Policy; Clear Screen
- Data Loss Prevention program
 - Valid business reason & executive approval required for use of USBs, CDs, DVDs
 - Only company approved devices
 - Annual electronic review of access rights
- Training
 - Doing What's Right campaign
 - Meet Sam Learning Moments
- Electronic Monitoring
- Blocking of websites – “Restricted Web Access”
- Chief Privacy Officer; departmental Privacy Officers
- Policies

Managing Information & Conduct Risks – Policies

- Email – occasional personal use permitted, but such use is not private
- Text Messaging
- Removable media
- Company provided mobile devices
- Client Privacy
- Employee Information Privacy
- Use of Photographic equipment, including webcams
- Voice Recording & Conversation Monitoring
- Protection of company information & equipment while travelling
- Work from Home restrictions

Some Industrial Relations cases

- Conduct of personal commercial small business
- Conduct of personal relationships; personal photo upload
- Storing & sharing porn, non diverse jokes & religious material
- Cyber smear
- Changing email messaging
- Delegate lobby & adverse comments on company network
- Harlem shake
- Downloading of free non work programs
- Managing #GenMobile - lots of pinging
- Facebook upload
- Adverse BBM message
- Instagram photo



Appendices

Social Media / Internet Policy - Some Legal Considerations

- Aug. 22, 2014 judgement - Triple Play Sports Bar and Grille (USA)
- Dismissed two workers following Facebook exchange
- Employees upset that they had to pay more taxes to State due to error in the employer's tax paperwork.

Conversation:

E.1 "Maybe someone should do the owners of Triple Play a favor and buy it from them. They can't even do the tax paperwork correctly!!! Now I OWE money ... wtf!!!!"

E.2 Liked post & said "I owe too," "The accountant is "such an a-----."

E.1 "Hahahaha he's such a shady little man. He proolly [*sic*] pocketed it all from all our paychecks."

Held:

The two fired workers were engaged in protected, concerted activity and the use of profanity did not make the comments unprotected defamation.

Social Media / Internet Policy - Some Legal Considerations (cont'd)

Key Takeaways for Employers:

- Do not assume that an employee agrees with every statement in a discussion posted on social media merely by selecting “Like.”
 - Look closely to see what specific posting the employee has “Liked” or otherwise endorsed
- Do not try to prohibit posting on job-related subject matters “but rather the manner in which the subject matter is articulated and debated among the employees
- To prove malice / defamation, the employer has to prove that the employee posted content knowing it was false or it was made with reckless disregard for the truth.

An employer can make rules that prohibit:

- “Verbal or other statements which are slanderous or detrimental to the company or any of the company’s employees.”
- “Any conduct” that “reflects adversely on yourself, fellow associates, or the company,” or “conducting oneself unprofessionally or unethically with the potential of damaging the reputation or a department of the company.”
- “Insubordination ... or other disrespectful conduct.”

Rules are rapidly evolving and there is no absolute clear standard yet

Sample Phrasing - Email Guidelines

- Email sent from or received by the company is the ***property of the company***.
- The ***company reserves the right*** to journal, retrieve and monitor logs detailing your email use at any time, for business, legal and regulatory compliance reasons and to protect the enterprise from viruses, spam and other malware or misuse.
- Email is provided to you as a tool to support your business needs. You may use email for ***personal reasons occasionally*** but it is intended for business purposes.
- When you use email, you need to ***use it properly*** so that it is protected from unauthorized access, use, disclosure, modification, interference, retention or destruction.
- You must ***never*** distribute email containing
 - material that is fraudulent, harassing, embarrassing, sexually explicit, profane, obscene, intimidating, defamatory, or otherwise unlawful
 - known destructive materials, e.g. viruses, worms, etc
 - alerts from outside sources for viruses or other security issues
 - chain letters of any kind.
- Compliance with ***anti-spam legislation*** is required

Sample Phrasing - Social Media Guidelines

- When using social media (for example, Facebook, LinkedIn, Twitter, YouTube, Flickr, FourSquare, QZone, Tencent Weibo, Sina Weibo), remember that ***our words are public and permanent.***

- We should consider the following when using social media:
 - Safeguard our personal and professional ***reputations.***

 - When we ***identify ourselves*** as working for the company or provide our company email address when using social media personally, our actions can reflect on our own and the company's reputation.

 - When we ***participate*** personally in external or internal social media, we should do so responsibly as we could be considered to represent the company both at and outside of work.

 - ***Confidential, non-public information*** relating to the company, its clients, employees, contract workers, or other persons must never be a part of our social media conversations

 - We need to consider the ***potential impact our comments*** may have on the company's reputation, and be guided by the standards set out in our Code of Conduct.

 - Social media is not an appropriate venue to express ***concerns about the company,*** our stakeholders or our competition.