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## BLOGS

Social Media & Technology

# Another Piece of the Puzzle: Social Media Concerns (Just) Outside the Employment Relationship

This blog has focused heavily on social media-related issues that arise in the employer/employee relationship and that have been a continual challenge for employers over the last decade. Employment-related social media issues are often close cousins to other important issues created by technology generally and social media specifically. It is crucial for businesses to step back and take a big-picture look at the wide range of social media-related considerations that affect the way they communicate, operate and compete.

Our firm recently completed a [publication](#) that identifies some of those other key concerns, in addition to reviewing employment-related social media guidelines. Topics covered include:

**Protection of Confidential Business Information:** We have previously blogged about the difficulty of keeping [confidential business information](#) including trade secrets [truly confidential](#) in this electronic age. This involves protection of information from outside competitors, as well as internal management of employee conduct and protection against future competition from former employees. There is a particular tension between a company's desire to have a social media presence, including a dynamic and information-loaded website, and the need to protect of confidential information. Even if information qualifies as a legally protectable trade secret (or legally protectable confidential information), the protection can be lost if the company allows the information to be disclosed to the public, whether via social media or otherwise. Communicating clear guidelines to employees, as well as constant, careful management of electronic content, is crucial.

**Violation of Others Copyrights and Other Proprietary Interests:** This is the flip side of an employers need to protect its own confidential business information. Companies need to take steps to ensure that their employees are not violating the property rights of others, including copyrights, through social media content sharing or the posting of information on the employers website. Even republication of information obtained from public sources can trigger liability if the information was improperly published in the first instance. Companies need to carefully control the information that is disseminated through social media and take prompt remedial action if others property rights are encroached upon. This is yet another area requiring clear guidelines for employees regarding acceptable and unacceptable conduct.

**Defamation of Competitors:** There is sometimes a very fine line between a company's statements extolling the superiority of its services or products and its statements running down the competition. If false, negative statements about a competitor can constitute business defamation. Companies may be held legally responsible for their employees defamatory statements, particularly if the employer has reason to know about them and fails to act to control or remedy those communications. Such derogatory comments may also harm a company's own business reputation, even if they don't create legal responsibility. Whether made on social media or otherwise, such statements create risk and employers should provide clear guidance to their employees about acceptable parameters for discussion of competitors.

**Privacy Considerations:** Social media use triggers a variety of privacy concerns that flow from both employer/employee relationships and company/customer relationships. We have previously blogged about privacy issues in [email](#)



searches, employees privacy rights in their social media accounts, and NLRB rulings related to employee privacy. State wiretapping and surveillance laws and federal laws such as the Electronic Communications Privacy Act, the Stored Communications Act, and the Computer Fraud and Abuse Act also apply to how a company uses and protects information gathered from customers and users of its website.

**A Legal Guide To Social Media in the Workplace** provides an overview of these considerations, all of which employers should have in mind as they draft their social media and electronic information policies.