



# YourSpace

## What to Address in Your Business's Social Media Policy and Why You Need One

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No one can dispute the influence of social media or the way it has revolutionized how the world communicates. Put simply, people, especially restaurant patrons, are connecting and exchanging information in ways that have never been possible before. Although social media websites like Facebook® and Myspace® were created for individuals to share up-to-date information about themselves and stay connected with friends and family, businesses too have started to realize social media's vast potential. Companies now use social media websites for recruiting, client development, marketing and other business purposes. Indeed, many companies in the restaurant industry are

adopting an array of tools to create an entirely new standard in customer relations.

Social media provides remarkable opportunities for the restaurant industry to extend its reach and connect with diners in exciting new ways. The number of mouths to feed is almost limitless — there are now more than 350 million people on Facebook® and more than 27 million “tweets” are exchanged on Twitter® every 24 hours. Other social media sites of interest to the restaurant industry include Foursquare®, Yelp® and Urbanspoon®, as they too garner an incredibly large (and loyal) following. By using these types of social media, this vast network of rumbling stomachs can be fed menu

specials, dining reviews, and event information almost instantly. This, in turn, can help ensure the continued success of your organization, even in these difficult economic times.

## New Technology, New Liabilities

These new technologies also present novel legal issues, and the restaurant industry must be cognizant of the potential dangers associated with social media to avoid getting burned. In 2008, a Burger King executive was caught allegedly using his child's online identity to attack a farmworker advocacy group that was trying to increase pay and improve conditions for tomato pickers. In 2009, the U.S. District Court for the District of New Jersey ruled against Hillstone Restaurant Group, finding that the restaurant violated several statutes when it obtained unauthorized access to an employee's Myspace® page. Domino's Pizza also faced a public relations nightmare when a video depicting two employees violating health standards in preparing food went viral. Just recently, a waitress at Brixx Wood Fired Pizza in Charlotte, North Carolina, was fired after she attacked a customer on Facebook for leaving a small tip. The explosion of social media has also made it easy for employees to share confidential data, make inappropriate comments about supervisors, co-workers or competitors, and sexually harass colleagues. Social media has even spawned a new word, "dooiced," which means getting fired for something you posted on your website.

Taking a proactive approach to these issues makes obvious sense, but it can often be a daunting task. The rapidly changing technologies and the bureaucratic inertia caused by the "committee" process make it very difficult for some companies to put a policy in place. One problem with so-

cial media policies is that they can be viewed as invasive. Monitoring or limiting employees' access to the Internet will likely be viewed by some as an invasion of their privacy. In addition, because social media websites are all about "people," employees may take offense when their employer tries to regulate what the employee can say or post on his or her personal website. Because of these heightened sensitivities, management must be especially careful in crafting a social media policy.

## A Dozen Points to Consider

Companies that have already adopted policies on electronic communications, Internet and/or computer usage may find it somewhat easier to add content addressing social media. Many of these policies already put employees on notice that use of company equipment waives any right to privacy and can be monitored. Some companies completely block social media websites on work computers and/or prohibit employees from engaging in social media at the workplace. These are but a few of the choices that you will face in crafting your social media policy.

While, admittedly, technology and social media networks are evolving, the following is a nonexhaustive list of issues that should be addressed in almost every social media policy:

**Purpose.** It is hard to get anywhere at anything without establishing a clear purpose. It is no different in the context of social media policies. Indeed, it is vitally important for your business to determine the purpose of your social media policy. For example, are you focused on protecting your restaurant from potential exposure to liability or do you want to harness the full potential of the Internet and its social networking tools? For many operators, the answer may be both. A short statement of purpose

for your policy will help employees understand it in context.

**Scope.** What technologies and social networking formats will your policy address? Do you seek to regulate the use of your equipment alone or the content that employees might post also? It is quite common for employers to prohibit personal use of company equipment. It is also perfectly lawful to prohibit employees from using personal hand-held devices while at work. Of course, it is much more difficult — if not impossible — to prohibit an employee from using personal equipment outside of the workplace. As a result, most employers will want to regulate both the use of company equipment and the content of what employees say outside of the workplace. While it is perfectly lawful to discipline employees for making disparaging, false remarks about the company, you may have difficulty disciplining employees for making true statements about the company. There is nothing wrong with prohibiting employees from making disparaging remarks about co-workers, customers or the competition. Some restaurant operators will want to carve out an exception to the normal scope of their social media policy to allow management or a marketing department to use social media to promote the restaurant or brand. Even where such employees are permitted to use social media at work, the normal content regulations should still apply.

**Privacy.** Because social media policies are often viewed by employees negatively because of the perceived effect on their privacy, it is prudent to remind employees that they have no right of privacy when using company equipment. Similarly, there is no problem in reminding employees that it is generally not appropriate to engage in personal communications during work hours and

at the work site. This would include personal cell phone communications, texts, e-mails, Internet searches, and various other personal communications unrelated to the employee's performance of his or her job duties.

**Disclaimer.** One of the most troubling issues associated with social media relates to the perception that your employees are speaking on behalf of your company when, in fact, they are not. To address this problem, some employers simply prohibit employees from making comments about the em-

ployer on the employee's website or webpage. As noted, you may be unable to prohibit an employee from making truthful statements outside the workplace. Other employers respond to this concern by requiring that the employee post a disclaimer stating that the views expressed on the personal website are not the views, opinions or statements of the employer.

income-generating) menu item were sacrificed by an unhappy employee's Internet posting. What if your vendor list and pricing or plans for expansion were released to the Internet? Today's technology allows for instantaneous and global dissemination of any information that slips through your grasp. Your social media policy is yet another opportunity to remind employees of the need to maintain the confidentiality of information critical to your business. Of course, this is but one step that you must take to protect

denied the position and files a lawsuit claiming that the employment decision was based upon discriminatory criteria. As a result, the better and safer practice is to adopt a policy that precludes the use of social media sites to glean information about candidates for employment. Especially prudent employers may also wish to disclose to applicants that social networking sites are not used or visited as part of the employer's hiring process.

**Wage-hour.** If you allow your employees to engage in social media

### Employees should also not send "friend" requests to subordinate employees.

In fact, managers and supervisors should be reminded of the dangers of using social media to communicate with subordinate employees.

Recent Federal Trade Commission guidelines require that an employee who posted an endorsement or testimonial regarding your product or service must disclose the fact that he or she is employed by you. As a result, your social media policy can and should prohibit employees from making personal endorsements and testimonials without such a disclaimer.

**Confidentiality.** Imagine if all of your efforts to protect that secret recipe for your award-winning (and

information that you view as your confidential trade secrets.

**Hiring.** The hiring process is another example of an area where the use of social media can be a double-edged sword. On the one hand, it would be great if your hiring manager could look to a candidate's social media site to see if that candidate had posted disparaging comments about a prior employer. On the other hand, visiting that candidate's personal webpage may disclose all kinds of information that should not be considered in the normal hiring process. For example, if a hiring manager decides to "do a little homework" on an applicant using any variety of the available social media tools, he or she may be exposed to information such as the applicant's race, sex, national origin, disabilities and views on unions.

Such knowledge could prove to be very problematic if the applicant is

on behalf of your company, you may wish to require that they do so only while at work or during regular work hours. Doing so may help reduce exposure under the Fair Labor Standards Act for overtime compensation based upon "off the clock" hours. Employees who are not exempt from the provisions of the FLSA and are engaging in work-related activities outside of their normal work hours, such as e-mailing, researching matters "online," or responding to voice mail, may be entitled to compensation for this "work." These types of lawsuits are among the most popular claims today and are extremely costly and burdensome to defend. Your policy should prevent employees from engaging in such activities during nonbusiness hours and you need to be sure that the policy is strictly followed. It is also helpful if your social media policy clearly de-

finer who should be engaging in social media activities on your behalf.

**Labor.** Although your policy may seek to limit an employee's ability to discuss his or her terms and conditions of employment on a social media site, you should be aware that the National Labor Relations Act permits employees to communicate with co-workers and others about terms and conditions of employment. Again, this is another reason to limit your regulation of content to statements that are untrue or disparaging comments about co-workers, customers or competitors.

**"Friend" requests.** Employees should also not send "friend" requests to subordinate employees. In fact, managers and supervisors should be reminded of the dangers of using social media to communicate with subordinate employees. The informal nature of social media and a wide variety of personal information found there may tempt managers or supervisors to forget that the normal workplace rules still apply. "Friend" requests can often put both a supervisor and a subordinate employee in uncomfortable situations. Your policy should strictly prohibit employees from making such requests on social networking sites. Similarly, your policy should prohibit your employees, particularly supervisors, from requesting log-in information for social media sites from co-workers. This act, while harmless on the surface, not only increases the risk of a harassment problem, but it may also be a violation of the Federal Electronic Communications Privacy Act.

**References.** Supervisors and co-workers are often asked by former employees to provide a reference on social media sites like LinkedIn. This is dangerous for several reasons. First, the reference information posted on the social media site may be different from the employer's official position. This could hurt

you if this social media reference is used to contradict or call into question the reference information that a prospective employer obtained from you. Second, a supervisor who provides a social media reference to one employee but not to another may expose your company to liability for discrimination. Accordingly, your social media policy should prohibit employees from providing such references for social media sites.

**Texting.** The enormous popularity of smart phones makes texting another potential social media problem. Your social media policy should prohibit employees from using their smart phones for personal purposes while at work and during working hours. This will help prevent customer complaints about delays caused by employees who stopped working to reply to a text message or tweet. While texting not only has the potential to cause the productivity of your employees to come to a grinding halt, you certainly do not want to see your company in the news headlines for an accident your delivery driver caused while texting. Thirty states now prohibit texting while driving, and your social media policy should also include such a ban. To be safe, your policy should also prohibit your drivers from using cell phones while driving.

**Training.** Once you have drafted your policy, you should publish it to your employees. Next, consider conducting a live training session so that you can call attention to key provisions in your policy and answer any questions your employees may have about the policy and what it allows or prohibits. Take note of those in attendance, retain this information, and consider obtaining a written acknowledgement of receipt from each employee, especially if that individual was unable to attend a training session. Periodically, you should remind

employees about what your social media policy requires and prohibits.

### Keep It Current

While a well-drafted policy can prove to be a significant asset to your organization, an outdated policy can have the opposite effect. This is especially true in the context of social media, as technology continues to develop. Therefore, review your social media policy on an annual or bi-annual basis for any revisions that need to be made. While doing so, think back over the past year and identify what questions, if any, have arisen under the policy. Any areas of concern should be reviewed and revised.

Any social media policy your organization decides to adopt will most likely fall in line with an array of other policies addressing various other topics. It is important to review each and every policy in place to determine whether they are in harmony with one another. It may also be important to cross-reference your other policies to ensure complete coverage.

These are a mere sampling of the various types of laws and issues that any company may face when preparing a social media policy. As always, it is best to seek the advice of a lawyer and technology expert to ensure you are in compliance with all applicable laws and regulations and well-positioned for the various types of issues that may arise. A well-crafted social media policy can help avoid embarrassing publicity and at the same time promote your brand or concept.

**Please note:** Legal articles are for your general information only. Legal advice must be tailored to the circumstances of each case, and laws often change. Federal laws, the laws of each state, and often each municipality vary and each may have their own procedures and time limitations that must be followed. Confer with a lawyer in your state to assess your legal rights in a particular situation.

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