



## **Social Media: Invading the Workplace**

by Kelly Schoening

kschoening@dbllaw.com

At this point, the world cannot ignore the commanding presence of social media—LinkedIn has 135 million members, Twitter users have tweeted up to 10,000 tweets per second, and a movie about Facebook recently topped the box office charts. Social media is no longer limited to homes and college campuses, but has invaded the workplace as well. Employees network with associates on LinkedIn, “friend” colleagues on Facebook, and tweet about their frustrations with their jobs. Accordingly, employers must be aware of the accompanying legal risks and implications related to using social media.

### **Recruiting**

Employers must often sort through a seemingly endless number of applications to find the ideal candidate. What better way to reduce time and screen an applicant than to check out their Facebook page? It sounds harmless, but the legal implications are stark.

Employers understand not to request certain protected information on applications, such as religious affiliation or family medical history. However, an employer who visits an applicant’s Facebook page is exposed to this protected information without requesting it and subjects itself to discrimination claims. For example, suppose that a hiring manager tries to narrow down a field of applicants by briefly scanning their Facebook profiles. The manager does not find any helpful information on Facebook and selects several applicants for interviews based solely on information contained in their applications. Meanwhile, John Smith noticed that the hiring manager viewed his Facebook profile before denying him an interview. John Smith brings a religious discrimination claim against the employer, alleging that he was not selected for an interview because he listed that he was a Christian on his Facebook profile. Thus, the manager exposed his employer to liability by visiting an applicant’s Facebook page and discovering a characteristic about the applicant that would have not otherwise been discovered.

### **Monitoring Employees**

Social media sites can serve as a medium for employees to criticize their employers or even post inappropriate material. As a result, employers may choose to monitor employees’ use of these sites, but they must do so without violating an employee’s rights.

Privacy rights are not a concern unless an employer accesses private information unavailable to the public. However, employers must be particularly careful to avoid interfering with labor rights. Employers—even non-union employers—may not punish employees for comments on social media sites concerning the terms and conditions of employment. Further, the NLRB has recently warned against broad computer usage policies that overly restrict employees from commenting about their employment.

The Solution? Employers need to tread carefully and consult legal counsel before disciplining an employee for misuse of social media, especially for negative comments regarding employment. Employers are also advised to implement a detailed social media policy prohibiting employees from using social media on company-owned computers and mobile devices.

### **Harassment**

Social media sites not only serve as a medium for employees to criticize their employers, but they also provide employees with an avenue to harass their colleagues. Unfortunately, harassment may be even more prevalent on social media sites than in person, as it is inherently

easier to harass a faceless person online. Employer liability for harassment is the same regardless of whether it occurs in-person or via social media.

The Solution? First, employers must ensure that social media is included in the company's anti-harassment policy. Second, employers must educate employees on that policy, including what constitutes social media harassment and how to prevent it. Third, employers should provide an accessible avenue to report any perceived violations of the policy.

Kelly Schoening is a [Northern Kentucky attorney](#) practicing at [Dressman Benzinger LaVelle psc.](#)