

# Leading in Today's Social Media Environment





# Facilitator

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About eXude Inc:

- Employee Benefits
- Risk Management
- Retirement Planning
- Human Resources



# Today's Objectives

## **Discussion of the Benefits and Risks in Four Key Areas:**

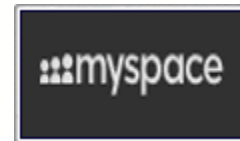
- **Pre Employment**
- Employment
- Post Employment
- Components of a Social Media Policy

Identify Employer Best Practices



# Test Your Social Media Savvy

- Number of members on Linked In?
  - 259,000,000 +
  - 184,000,000 unique visitors each month
  - 9a – 12p highest usage ( Mondays?)
- Number of members on Facebook?
  - 500,000,000
  - People spend 700 billion minutes per month
  - Avg user spends 55 min per day
- Average number of “tweets” per day?
  - 140 million average per day last month
- What is a “rogue” tweet?
- What is “click regret?”





## Now What?

Social media brings both opportunity and risk to both employers and employees:

<http://www.youtube.com/watch?v=GaO8WltLmEk>



# This horse is out of the gate...



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# Advantages of Using Social Media in the Workplace

- Cost-effective means of targeting a wide audience for marketing and/or recruitment purposes
- Enhances internal and external communication
- Enhances collaboration and creativity
- Bolster business reputation
- Instant communication





# Social Media Presents Challenges in the Workplace

- Impact on employee productivity and efficiency
- Possibility that confidential and proprietary information is disclosed
- Potential to harm company's reputation or reputation of individuals
- Additional venue for inappropriate conduct, harassment, discrimination
- Risk – driving while texting, using mobile apps, etc



# What Employers Are Doing...

- 44% have policy on social media in place.
- 53% have company Facebook Pages
  - of these, 61% do not have a policy on social media use
- 31% report having company Twitter accounts
- 12% report using LinkedIn for recruiting purposes
- 17% report using social media for research on candidates
- 33% report having disciplined employees for misuse of social media
- 7% terminated employees for misuse of social media
- 91% report never having to discipline employee for comments posted on social media outside of work.



# Pre Employment

## Benefits:

- Increase reach to passive job seekers
- Court talent
- Cost effective means of targeting for recruitment purposes
- Useful information obtained easily
  - Writing skills; poor judgment unprofessionalism; illegal conduct
  - Community involvement; hobbies



# Pre Employment

## Legal Risks:

- Access to information not otherwise entitled to as part of interview and selection process
- Hiring decisions based on lawful conduct viewed through social networking sites could violate state off-duty conduct laws
- Potential liability under anti-discrimination statutes when hiring decisions are based on information regarding an applicant's membership in a protected class
- Proving that information was not considered is difficult
- Evidence remains after decision is made



# Tips for Employers

- Set and communicate criteria for use of social media in the recruitment/selection process
- Train hiring managers on use of social media for recruitment
- Be consistent in use
- Select list of sites that will be searched for all applicants & search for **job-related** information
- Designate a non-decision maker to conduct searches
- Document legitimate, non-discriminatory reason for employment decision



# Tips for Employers

- Prohibit the use of photos and videos from applicant's social networking sites as part of the application process
- Consider having applicants execute an acknowledgement that a review of social networking sites may be part of the hiring process



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# During the Employment Relationship

## Benefits:

- Engage employees in mission/vision/technology
- Internal communication
  - Wellness, company news
- Training
  - Podcasts, Tweets
    - Regular
    - Real time
    - Affordable
- Examples:
  - American Red Cross
  - Indiana DA
  - WC Claim





# But Consider This . . .



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# What You Need To Consider...

- NLRA protected concerted activity
  - Applies to union and non-union workforces
- Off-duty conduct laws
- Federal and State Anti-discrimination laws
- Prohibition against retaliation
- Just Cause vs. At-will
- Investigation into misconduct or company practices
- Anti-harassment policy



# During the Employment Relationship

## **Risks:**

- Employees can make negative, but lawful, comments about supervisors/managers on social media sites.
- Additional venue for inappropriate/offensive conduct
- Defamation

## **Recent NLRB Cases:**

- CT Ambulance company fired worker who complained about her supervisor on Facebook
- NLRB – issued unfair labor practice “workers criticisms on social networking sites are “protected concerted activity.”
- 129 Charges/ 4 Complaints – NLRB looking for overbroad policies, retaliation for engaging in protected activities



# NLRB Key Decisions

## 2012: Key Decisions:

- Employer policies should not be so sweeping that they prohibit the kinds of activity protected by federal labor law, such as the discussion of wages or working conditions among employees.
- An employee's comments on social media are generally not protected if they are mere gripes not made in relation to group activity among employees.

## Examples:

- BMW Dealer employee – termination not unlawful
- Non profit NY – 5 employees; unlawful returned with back pay

# Productive or not?



## Productive\*:

- Generation of multi-taskers (3-5 v up to 20)
- Provides necessary mental breaks during day
- Communication brevity
- Networking
- Trends and topics
- Fingertip information
- New business model

\*Social Media Today

# Productive or not?



## Not:

- 44% online video viewed in workplace\*
- Companies that allow access to Facebook lose avg of 1.5 percent total employee productivity (reported avg 2 hours per day usage)\*\*
- Government entities restricting use examples SEC, State of Vermont (2,300 hours in one week)

\*Tech Journal South

\*\* Nucleus Research



# Tips for Employers

- Set and communicate guidelines and apply consistently
- Identify social media “safety”
- Be open-minded and prepared to handle “hiccups”
- Cannot prohibit use by employees outside of work;
- Educate and discourage management from “friending” employees;
- State law may limit employer’s right to take action with regard to legal, off-duty conduct
- Can offer guidance for non-work use
  - Avoid endorsements
  - Encourage appropriate disclaimers
  - Respectful in making comments



# Tips for Employers

**If management wants access to a restricted employee site – be mindful of the following:**

- Cannot coerce
- Document employee authorization
- Acknowledgement that employee understands s/he will not be subject to adverse action if s/he does not comply
- Revocation of consent permissible at a later date





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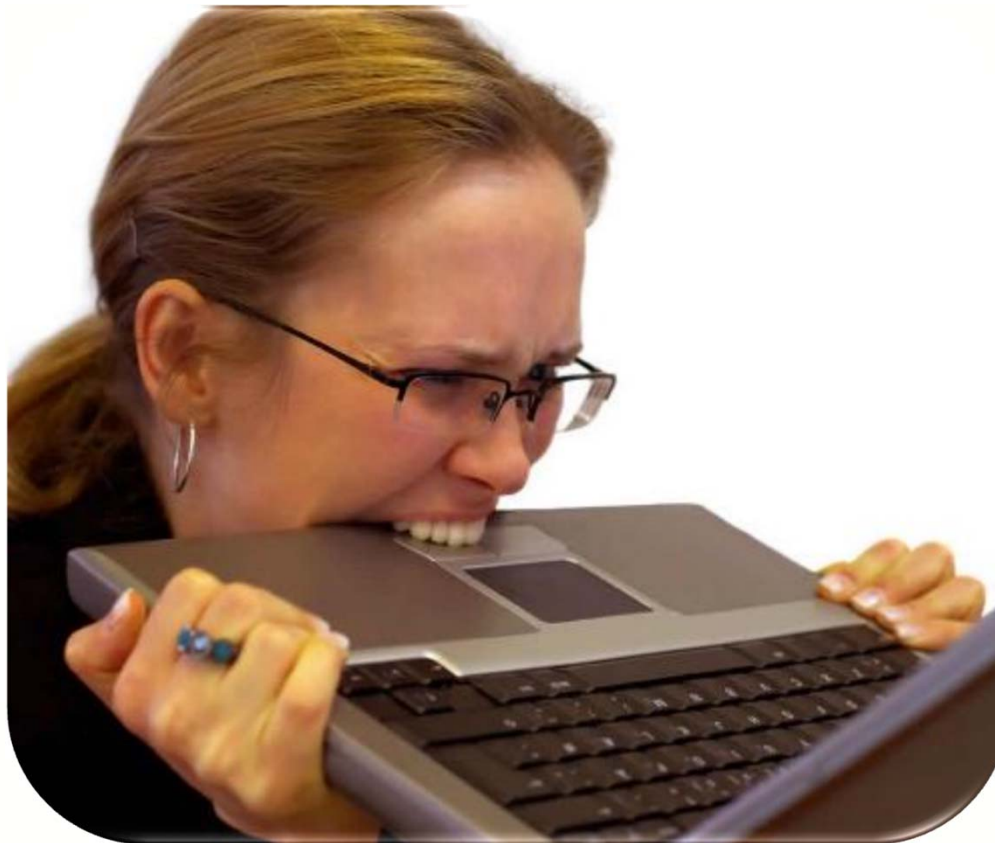
# Post-Employment

## Considerations for Employers:

- Source of informal references vs. company reference
- Comments by non-designated personnel on reasons for separation or other sensitive matters
- Speed of communication makes it difficult to control once it is out of the box
- Evidence in Litigation
  - Violation of nondisclosure, non-solicitation, non-competition agreements
- Monitor for negative comments about company



# What Can Employers Do To Manage Risk?



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# What to include in your social media policy?

- Purpose
  - Why this is relevant and company stand on social media.
- Scope
  - List external tools that apply such as Facebook, LinkedIn, Twitter, etc.
- Guidelines
  - List guidelines, terms and conditions around use
- Consequences
  - Define consequences of not adhering to policy.



# Components of a Social Media Policy

- No expectation of privacy
- Limit use during working hours
- Remind employees that posting can be viewed by customers, vendors, colleagues, etc.
- Caution against posting inaccurate information
- Prohibit use of sites to engage in harassment, discrimination or other violations of company policy
- Prohibit disclosure of proprietary and confidential information



# Components of a Social Networking Policy

- Prohibit use of sites to defame, disparate, malign
- Express acknowledgement that nothing within policy intended to interfere with employee rights under NLRA
- Work-related communications must reflect company's standards
- Enforce in consistent, uniform manner
- Maintain honest, ethical behavior



# Components of a Social Networking Policy

- Prohibition on posting pictures taken at company events, without permission and company logo, or intellectual property
- Include disclaimers that content is the individual's opinion and not that of the company
- Violations subject to discipline





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# Best Practices for Employers

- Ensure social media is in sync with your overall strategy/ vision/mission.
- Maintain written policy on use of Social Networking in the workplace and update periodically.
- Revise other policies for consistency (electronic communications, anti-harassment, complaint procedures.)
- Consistently and uniformly apply policy.
- Educate and train staff on policy and guidelines for appropriate use.
- Conduct investigation of complaints posted on sites
- Be open-minded.



# Best Practices for Employers

- Train managers on appropriate use of information for employment purposes
  - Example: protected characteristics, affiliations, lawful off-duty conduct



# Questions & Answers

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