

Social media at work: If you can't beat them, draw up a policy

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As social networking continues to influence the way people communicate, it's no surprise this Internet phenomenon has managed to creep into the workplace, with potential implications to workplace productivity— even health and safety. Legal experts at a recent seminar discuss some practical options for employers.

If you're among the millions who've seen the YouTube video of a food safety prank instigated by two Domino's Pizza employees from North Carolina, you may have a pretty good idea of what might have happened to them after their video went viral.

If you guessed, "fired," you're right, but terminating these two employees was just the beginning of the public relations disaster Domino's Pizza had to face following the controversy — customers were turned off, sales dropped and the Domino's Pizza branch where the video was shot was temporarily shut down for health and safety inspection.

Ultimately, the incident was a lesson that legal experts say employers are now having to learn as social networking — through sites like Facebook, Twitter and LinkedIn —increasingly gains prevalence in people's lives, even extending to the workplace.

At a recent seminar entitled, *Social Media in the Workplace: Uncharted Territory for Employers*, lawyers at Sherrard Kuzz LLP, a Toronto-based labour and employment law firm, explained some of the implications of a social-network-savvy workforce to any organization.

The event speakers, who are lawyers at Sherrard Kuzz, admitted that social media is "something that we need to address in each of our workplaces" — and creating a sound policy that's appropriate and reflective of the nature of the workplace and the workers is a good place to start.

"In some ways, it's a general issue, but in some ways it's simply a workplace policy issue," said Lorenzo Lisi, a lawyer with Sherrard Kuzz and one of the speakers. The younger generation considers social media as a perfectly acceptable form of communication and employers need to find effective ways to adapt to this norm.

There are several reasons why employers may resort to monitoring employees' Internet usage, according to Lisi. Employers may monitor usage to determine the impact on productivity: How much time are employees spending on the Internet for personal reasons? Are employees using social media sites as a marketing tool to promote the company's brand and profile?

Workplace liability considerations may also cause an employer to monitor Internet use, to ensure that bullying and harassment involving their employees are not taking place over the Internet. Bill 168 — the workplace violence amendment to the Occupational Health and Safety Act in Ontario — requires employers to ensure that their employees are protected from violence and harassment in the workplace, Lisi explained.

“We need to understand there are liabilities from a criminal perspective and from a fraud perspective,” he said.

Lisi cautioned employers about the possible implications of monitoring activities with respect to privacy laws and the employees' reasonable expectation of privacy. The Personal Information Protection and Electronics Document Act (PIPEDA) prescribes specific obligations with regards to the collection, use and distribution of personal information. Employers must be careful about what kind of information is obtained, how they're obtained and how they are used.

Employer should also consider making a plan of what they would do in response in the event that a breach does occur in the social media realm, said Pamela Shin, also a lawyer at Sherrard Kuzz.

As an example, when the Domino's video of the two employees came out and went viral, the company posted its own YouTube video responding to the incident and reassuring the public of their commitment to food safety.

When developing Internet or social media policies in the workplace, companies must clarify what is and isn't permissible. Shin noted that employers should be able to strike a balance between employees' ability to freely express their ideas in their private lives and their duty of “faith and fidelity” to their employer.

“The first question you need to establish [when investigating an incident] is ‘is there a connection between the conduct of the employee and the well-being of the employer?’” Shin said.

She said the three important questions employers need to ask are:

- Was the employee’s conduct sufficiently harmful to the interest of the employer?
- Did the conduct violate the employee’s duty of faith and fidelity to the employer?
- Did the employee do anything that’s prejudicial to the reputation of the employer?

Lisi also offered the following practical tips when developing an Internet use or social media use policy in the workplace:

- Ensure policies address confidentiality and acceptable conduct
- Clearly communicate what is acceptable
- Ensure sufficient notice
- Be consistent in applying policies
- Establish a process for addressing social networking concerns
- Discipline, when appropriate