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Let's say your firm hires a new lateral. After he starts work, it comes to light that he badmouthed his old firm on Twitter. The legal blogs pick up the story, it goes viral and suddenly the news about your firm's exciting new star gets replaced by gossip about a disgruntled partner who said rude things about his former employer. Or let's say you have an attorney at your firm who maintains his own blog unmonitored by the firm and trips over conflict issues or uses your firm's logo, branding or messaging in potentially damaging or embarrassing ways. Does your firm have a clear policy explaining your firm's stand on social networking to prevent problems down the road?

Dangers of LinkedIn recommendations

Social networking issues arise with all law firm employees not just attorneys. These issues range from lost productivity checking Facebook or from staff soliciting others for LinkedIn recommendation. For example, if a paralegal solicits a LinkedIn recommendation from a partner who agrees to give him or her a glowing recommendation, this could pose problems if the paralegal is subsequently terminated for cause and sues. Every employee should be counseled about the use of LinkedIn recommendations.

Companies and law firms are using social networking in the hiring process

While there are risks associated with companies allowing their employees to use social networking, it is a useful tool, particularly during the hiring and screening process. According to a study published in 2009, Harris Interactive found that 45% of all employees use social networking to screen candidates. That number jumps to 53% for professional services such as law firms. The top three social networking sites for employer screening are Facebook, LinkedIn and MySpace.

Employers reported that 35% of the time they found content that discouraged them from hiring candidates with the top three red flags being inappropriate photos, evidence of drug use or excessive drinking and badmouthing a previous employer. However, they also found content on those sites that made them more likely to hire someone, for instance a profile that documents the candidate's relevant skills and talents or that the candidate's personality seems like a good fit.

How should law firms cope with these issues?

First, the policy should be developed with input from partners, associates, staff, administrative managers, IT, marketing and human resources. Those tasked with writing the policy should be educated in how social networking works, appropriate and inappropriate use and the pitfalls as well as benefits. Next, this group's role needs to be ongoing as this will be the first version of a policy that will evolve. Social networking isn't going away, but it's also likely to look very different within the next couple years. Your policy will evolve with the technology.

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First Steps Towards a Social Networking Policy (Continued from page 8)

Cracking down doesn't work

Law firms must first face the reality that social networking has loosened control over communications with employees, clients, prospects and the larger society. If they don't and instead enforce draconian measures, they will create poor morale, viral bad press, stifled creativity and brain drain. Once the new reality is accepted, then law firms can craft a policy that encourages appropriate use of social networking during working hours and beyond.

Employees must face a new reality, too. They put their careers at risk by inappropriate use of social networking. That's why it's essential that the firm's social networking policy include a training component. Employees have a strong incentive to use social networking to benefit their organizations, but they need to know how the appropriate use of social networking will benefit them.

Privacy, privacy, privacy

While a law firm's social networking policy should address a number of functions - legal and business risks, appropriate and inappropriate behavior - the critical issue is privacy. If employers and employees understand how to protect their privacy, they can avoid many of the problems inherent in social networking. It's critical to understand the terms and conditions of social networking sites which outline how the site uses their information. All users of any given social networking site also need to understand the privacy settings of these sites. Do they automatically make a user's information public? This was what Facebook did by default and they were sued by the Office of the Privacy Commissioner of Canada. Out of that litigation, Facebook agreed to change its privacy setting so that users can choose to make content public rather than having to proactively choose to make it private. It is expected that more social networking sites will follow suit.

Risks of innovation

The rise of social networking, like all innovations, follows a predictable pattern. There is the initial gee-whiz

factor and the blank stares from most people when early adopters enthuse over the latest innovation. Then there is broader adoption and the ensuing hype over how Twitter is a panacea. Then a backlash develops based on exaggerated claims, ignorance and fear. Finally, the technology becomes such a basic part of doing business that it no longer garners unusual attention. Society by then is on to the next innovation. Right now, we are in the backlash stage and law firms that are educated, and act with common sense and thoughtfulness can develop policies that give them confidence that their use of social networking is just another part of business as usual.



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