

# E-careful out there!

## How to avoid the pitfalls of social media in the workplace

INTERVIEWED BY ROGER VOZAR

Social media has pervaded the workplace. With more than 1 billion people on Facebook and 140 million Twitter users generating 340 million tweets a day, companies see the potential of social networking and often rush to get on board without formulating a comprehensive policy.

“Take a step back and consider the implications of posting — whether officially in your business, unofficially by employees, or about your business by disgruntled customers or competitors. Develop a plan for protecting your interests on all those fronts,” says Karen C. Lefton, a partner at Brouse McDowell. “That means drafting, implementing and, where appropriate, disseminating your policy before you are the target of a nasty post.”

*Smart Business* spoke with Lefton about what companies should consider now with social media.

### What can companies do to protect themselves against disparaging statements made by customers or competitors?

Anyone who posts defamatory statements about your business may be subject to a defamation action. There must be a false statement of fact, published to at least one other person, with the requisite degree of fault — negligence or actual malice — resulting in damages. It is important to recognize that ‘opinion’ is protected. This is especially significant in the social media context, where reviews are pervasive and even encouraged on companies’ websites. When you do this, you invite potentially negative comments, but not ones that would be actionable in defamation.

### Does that mean reviews are exempt from defamation lawsuits?

Reviews are usually excluded because

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opinions are protected speech. A false statement of fact is essential to a successful defamation claim. However, if someone says, ‘There was a cockroach in my oatmeal,’ that is demonstrably a statement of fact. If it is false, the restaurant where the oatmeal was served would have a potential defamation claim.

### Whom would you sue?

The poster. Internet Service Providers generally have immunity for the posts on their sites, but the poster does not. Historically, defamed entities were reluctant to take action against an individual poster because the cost far exceeded the payoff. However, many homeowners’ insurance policies cover individuals for actions in defamation, which may provide some recompense for defamatory posts.

### What if the harmful statements are made by your own employees? Can you fire them?

Be very cautious. Section 7 of the National Labor Relations Act protects employees who engage in concerted activity, so employees who post disparaging comments about wages and working conditions — including bad things about the boss or the business — are usually protected. This applies as much to employees in nonunion settings as to those in unionized workplaces.

An employer may be found to have

violated the act not only by disciplining a worker for what he posts but for merely having a policy that could be interpreted as chilling an employee’s Section 7 rights. Your policy governing employees’ use of social media must be very carefully drafted.

### Are there pitfalls if employees post as part of their job, sanctioned by the company?

Absolutely. According to the Society of Human Resource Management, 68 percent of businesses require employees to use social media as part of their job. Of those, 73 percent give no training in how to use it appropriately.

Every company with a social media presence should have a policy governing its official website and social media accounts, including identifying those employees authorized to speak on behalf of the company and training them to ensure that private information — whether about employees, business plans or anything else — does not leak out. This is a growing problem because communication on social media is so quick and casual that it often does not get the same attention as a printed marketing piece. It should get more, as it will last virtually forever.

### How can you avoid social media pitfalls?

Get expert help drafting your policies. Implement them. Follow them. ●