

Social Networking

An Employers' Guide to the Risks and Rewards

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What is social networking?

Social networking occurs when individuals, groups of individuals or organizations utilize various media to communicate his, her or their message. It can be on a small scale, such as when an individual posts a message in a chat room or in response to a blog. It can be on grand scale, such as when a video posted on YouTube has millions of viewers. There are hundreds of social media sites to foster these exchanges, including but not limited to Facebook, MySpace, Twitter and LinkedIn.

Who is social networking?

It may be easier to list who isn't. What began as a means to connect youthful "friends" has developed into a powerful tool for

commerce, politics, religion or any person or entity with a message to deliver. Your employees are using these media for personal reasons at work, and for business reasons at home.

Where are they social networking?

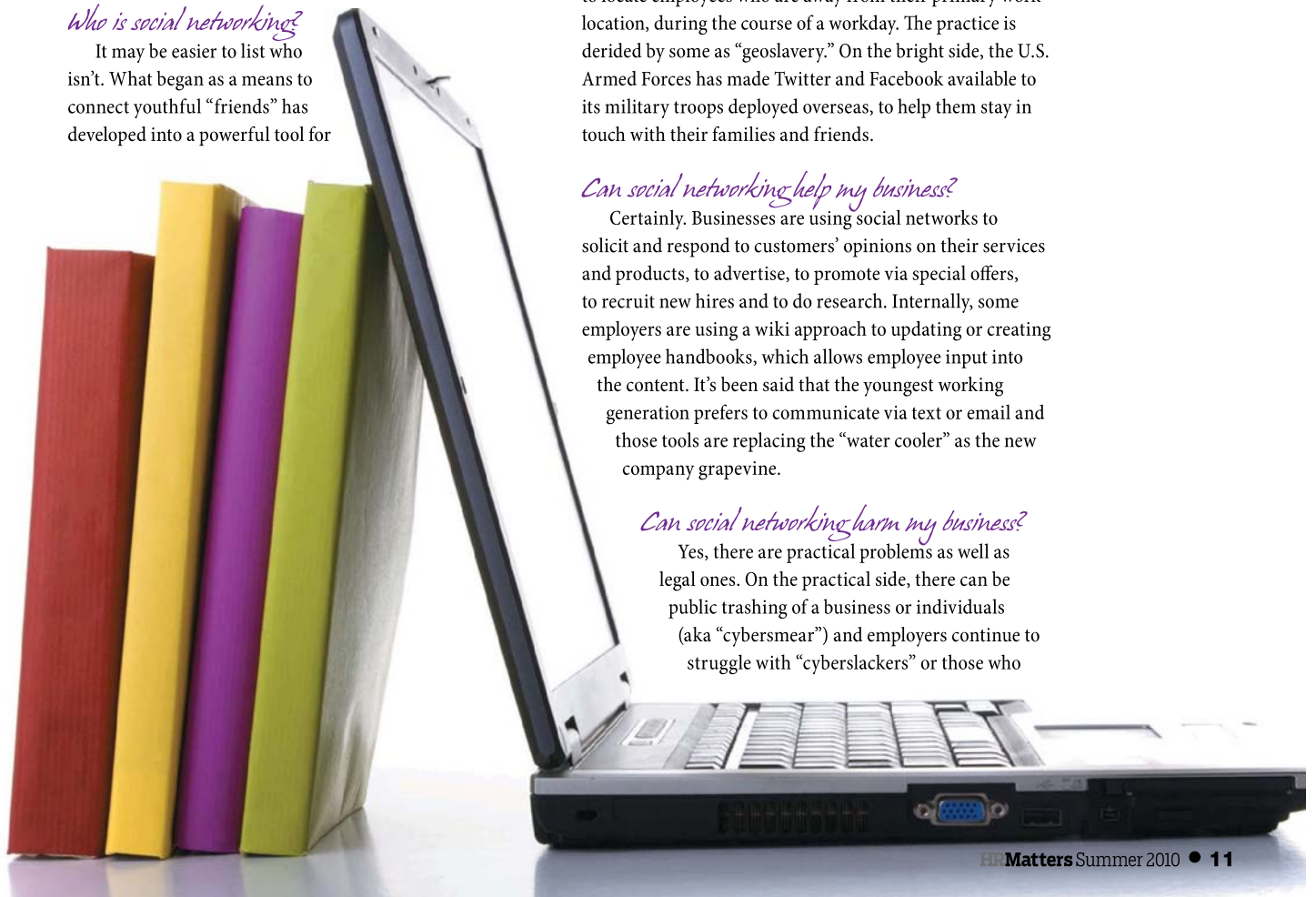
Social networkers can do this anywhere, using their work computers, home computers and mobile devices such as laptops and smart phones. Some employers load their company's mobile devices (and company cars) with GPS, to locate employees who are away from their primary work location, during the course of a workday. The practice is derided by some as "geoslavery." On the bright side, the U.S. Armed Forces has made Twitter and Facebook available to its military troops deployed overseas, to help them stay in touch with their families and friends.

Can social networking help my business?

Certainly. Businesses are using social networks to solicit and respond to customers' opinions on their services and products, to advertise, to promote via special offers, to recruit new hires and to do research. Internally, some employers are using a wiki approach to updating or creating employee handbooks, which allows employee input into the content. It's been said that the youngest working generation prefers to communicate via text or email and those tools are replacing the "water cooler" as the new company grapevine.

Can social networking harm my business?

Yes, there are practical problems as well as legal ones. On the practical side, there can be public trashing of a business or individuals (aka "cybersmear") and employers continue to struggle with "cyberslackers" or those who



neglect their duties while engrossed in on-line activities such as chatting, viewing videos and live feeds, multi-player gaming, shopping and more.

In addition to lost productivity, other costs arise from theft or loss of trade secrets or other intellectual property; introduction of worms, viruses and code designed to steal data and disrupt operations; clogged bandwidth; and activities that leave the individuals and/or the individual's employer open to legal liability.

On the legal side, individuals and/or their employers may be held responsible for their employee's acts, including violation of discrimination and harassment laws, defamation, Security and Exchange Commission violations involving insider trading, downloading of porn (see *Doe v. XYZ Corp*) and invasion of privacy. The Federal Trade Commission's recent "Revised Endorsement

Those standards will incorporate existing guidance (e.g., EEO, confidentiality), to the rules for use of electronic media and address issues that are unique to media, such as security, privacy, software licensing and the new FTC guidance on endorsements. Make sure the policy includes an express disclaimer of privacy and notice of monitoring, but do check applicable state law first.

You will also want to familiarize yourself and your IT department with the evolving boundaries of privacy, when it comes to accessing employees' electronic communications, even when those messages are on the company's devices or systems. While your IT team may be very deft at bypassing passwords or otherwise hacking into a user's account, just because they CAN does not mean they SHOULD.

Consider this case — two waiters were fired after their employer read their private MySpace page, which included

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and Testimonial Guides" put employers on the hook if an employee blogs about his employer's product or services without adequate disclosures of the employment relationship.

The federal and states' governments are beginning to ban use of electronic communications devices while driving, in an attempt to cut down on the number of accidents caused by distracted driving. Managers who "friend" their employees and post glowing recommendations about them on LinkedIn may find their posts harmful to their company's position, if and when an employee is let go due to poor performance.

What can I do to avoid the pitfalls?

Resist the urge to ban all personal use of the company's devices and systems. It's unlikely that this draconian approach will be consistently enforced, leaving the employer exposed to claims that the ban violates employees' Section 7 rights to engage in protected, concerted activity under the National Labor Relations Act.

A good starting place is a social networking policy, as part of your workplace standards, which can be communicated via an employee handbook, Intranet or other means. You do not need separate policy statement for each type of media (e.g., e-mail, Internet, computers, phones) and they tend to be redundant. Use a single Electronic Communications policy, to apply the same standards to all media.

sexual banter aimed at management and customers. It looked like violation of the company's harassment policy, but the larger concern was the employer may have coerced the password out of the jokesters' co-worker, to get access to the invitation-only chat. In doing so, the court agreed with the plaintiffs that the employers had violated the federal Stored Communications Act and the NJ Wiretapping and Electronic Surveillance Control Act, and more, entitling the plaintiffs to compensatory and punitive damages. (See *Pietrylo v. Hillstone Restaurant Group*).

Involve your legal counsel when considering discharging an employee for conduct tied to use of social media, to ensure that the employer does not open itself to potential liability. For example, a number of states have laws that protect employees from adverse employment action arising from their conduct outside of the workplace. Statutes that protect whistleblowers from retaliation, such as Sarbanes-Oxley and OSHA, may be implicated. Even certain states' constitutions, which contain a right of privacy, can be at issue.

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