



Social Networking – Aren't You My Friend?

by Bob Hoffer

The increasing use of Internet social networking Web sites raises new issues for employee privacy. While advancements in technology have allowed for increasingly effortless communication, all aspects of people's lives are exposed to unsuspecting visitors, including employers. Through social networks such as Facebook, MySpace, Weblogs, Twitter, and LinkedIn, employers have access to information about their employees' conduct and admissions, both on- and off-duty. While it is well-established that employers are free to monitor employees' conduct during working hours, an emerging controversy in employment law is to what extent employers may regulate employees' activities during non-working hours.

Currently 28 states and the District of Columbia have passed laws to limit employers' rights to regulate their employees' off-duty conduct.

The reach of these legal protections varies by state. For example, Kentucky statutorily protects employees' use of tobacco, while that state's stance on other off-duty activity by employees, such as statements made while communicating on social networking sites, remains to be seen.

Case law and the employment-at-will doctrine generally favor the employer, but off-duty use of social networking sites is, as yet, uncharted territory. Generally, courts faced with employee privacy cases balance the employee's privacy interest with the employer's interest in regulating its employees' conduct. Such a balancing act is highly fact-specific. Whether an employer may regulate its employees' off-duty conduct will certainly depend upon policies in place and employers' interests at risk.

Suggestions for Employers

An employer should consider taking three steps to protect itself against liability for disciplining an employ-

ee's use of social networking sites: (1) An employer should only regulate the off-duty activity for legitimate business reasons. For example, the employer should consider whether the employee's statements

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Buying A Small Business? Do Your Homework

by Patrick Hughes

In today's economic climate, a number of experienced and highly educated professionals are facing an unplanned career change. Many see this as an opportunity to pursue the dream of entrepreneurship by purchasing a small business. If you are one of these, make sure you do your homework. While you personally need to determine what type of business you will buy, and whether you have the necessary skills and passion to make it succeed, you'll also need to consider the less exciting technical issues. Here's your assignment:

(1) Get real financials. The number one thing you should do before buying a business is to verify its financial performance. Don't rely on the seller alone for this. While you can start with seller-prepared num-

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or conduct is injurious to the company and its operations.

(2) An employer may limit employees' privacy expectations by notifying employees of potential monitoring. The use of social networking sites should be addressed in the company's policies. For example, an employer should advise its employees that, if the employee's off-duty use of social networking sites breaches the employee's duty of loyalty to the company, the employer may take adverse action against the employee. Additionally, an employer may consider requiring the employee to consent to online monitoring as a precondition to hiring. If this consent is verified in writing, it will likely provide a strong defense for an employer who has terminated an employee for off-duty activity.

Generally, courts faced with employee privacy cases balance the employee's privacy interest with the employer's interest in regulating its employees' conduct.

(3) An employer should consider whether statements by employees on their terms and conditions of employment invoke protection for even non-union employees under the National Labor Relations Act for concerted activity. Social networking will be a hotbed of litigation until the issue is clearly addressed by statute or case law.

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Ohio's Minimum Wage Won't Rise In 2010

The Ohio Department of Commerce has announced that Ohio's minimum wage will remain the same in 2010. You will recall that the state minimum wage has been tied to the consumer price index for urban wage earners and clerical workers since 2006. For the 12-month period before September 1, 2009, the index declined by 0.2 percent. As such, employers grossing more than \$267,000 per year will continue to pay \$7.30 per hour to non-tipped employees and \$3.65 per hour to tipped employees in 2010. Smaller employers will continue to pay the federal minimum wage, currently \$7.25 per hour. The minimum wage for 14- and 15-year-old employees remains \$7.25 per hour. A new poster is available at: http://www.com.ohio.gov/laws/docs/laws_MinimumWagePoster2010.pdf

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bers, don't stop there. Request tax returns and financials prepared by a third-party accountant. Then have it all reviewed by an accountant you know and trust.

(2) Make sure the business can be sold free and clear of liens and claims. Many businesses finance operations, inventory or real estate. This can mean that security interests may encumber the business's assets. Make sure you have conducted all of the necessary searches, e.g., for liens and mortgages. Sometimes a small business has been in litigation and is subject to a court judgment, so you should conduct a litigation search as well. If it turns out your seller owes a bank or other creditor, make sure any creditor is paid before you take title to any part of the business, or you may be buying a liability.

(3) Only buy what you want. You should only buy assets such as inventory, real property, equipment, customer lists, intellectual property and receivables, and avoid assuming liabilities. Depending on the transaction, assuming some liabilities may be unavoidable. For example, if the business is operated on leased premises, you'll have to assume a lease. If there are existing employees, you'll need to decide whether to retain them. There are significant legal issues associated with retaining existing employees, so make sure to

consult a human resources professional and legal counsel.

(4) Confirm government approval. Even in our free market economy, all businesses are regulated to some degree. Make sure the one you are buying is in compliance with all applicable local, state and federal laws and regulations. This includes zoning laws, building codes, tax laws, occupational licenses and other relevant regulations.

(5) Have a plan. Even if you're buying a business with a history of success and an excellent business model, you must make your own plan. The most important part of the plan is your budget. Preparing a budget based in part on your financial due diligence will give you more realistic financial expectations and help control expenses. Perhaps most notably, a written plan, budget and pro forma financial statements will help you persuade a lender to extend you credit.

This is just a brief summary of the due diligence items you will need to complete before buying a business. Doing your homework first will greatly increase the likelihood of your success in your new business venture.

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