

# Privacy & Social Media in the Workplace: Where We Are in 2014

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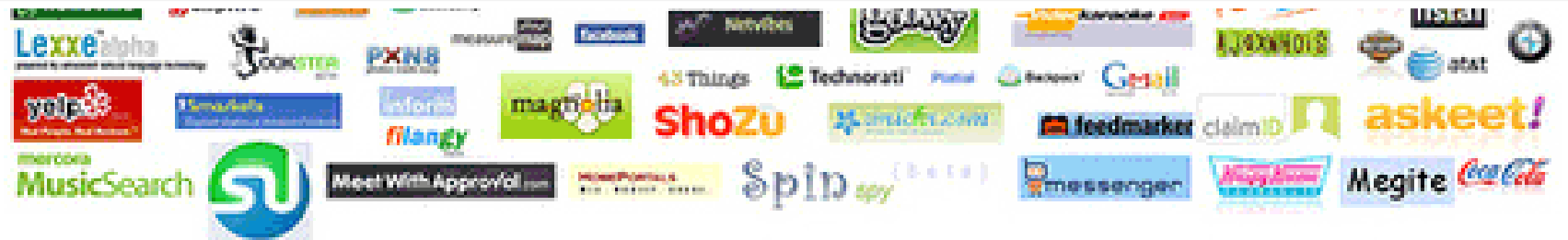


## **Let's Share:**

- Who has a social media account or profile?
- Googled, Facebooked, Liked, Linked, Commented, Endorsed, Tweeted, Updated, Poked, Ranted, Blogged, or Shared?
- Anyone comfortable sharing with everyone here?

# What exactly is Social Media?

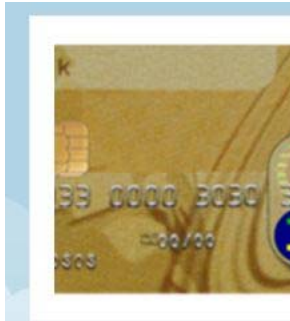
A type of online media where information is uploaded primarily through user submission. **Web surfers are no longer simply consumers of content, but active content publishers.** Many different forms of social media exist including more established formats like Forum and Blogs, and newer formats like Wikis, podcasts, Social Networking, image and video sharing, and virtual reality.



# Everyone's Doing it . . .

- Social media accounts for **16 minutes** out of every **1 hour** spent online.
- Instagram acquired a user base of **4.25 Million** in only **7 months** – **42 Million** photos posted every **day**.
- Businesses are paying **Twitter \$120,000** to **sponsor** or **trend** an **account** or **topic**.
- **Facebook** has over **1.1 Billion** users and **Google** handles over **100 Billion queries** per **month (37K / sec.)**
- Every **two** days there is **more information** created than between the **dawn** of **civilization** and **2003**.

# And they leave their brain at the log-in screen...



**Cassidy** [redacted] 4 Jun  
Of course I find my debit card the day after I cancel it and order a new one. [instagram/p/1c4ITjRY71/](#)  
Retweeted by Debit Card  
Hide photo Reply Retweet Favorite

A Wells Fargo Platinum Debit Card. The card is dark grey with a red background at the top and bottom. It features a red Wells Fargo logo in the top right corner and a silver illustration of a horse-drawn carriage in the center. The text "PLATINUM DEBIT CARD" is visible at the top, and "WELLS FARGO" is in the top right. The Visa logo is partially visible at the bottom right.

**Her Actual Credit Card Number**  
**Her Actual Name**

Instagram

[Follow](#)

14 TWEETS

0 FOLLOWING

11,020 FOLLOWERS

## ... **Employees too**

- Network Box reported that **7 out of 100 URLs** accessed by businesses were directed to **Facebook** and **10%** of Internet **bandwidth** went to **YouTube**.
- One study determined that **Facebook costs employers \$28 Billion** per year in productivity-loss . . . **“Cyberloafing”** is now a thing and a concern.
- A research by Convergys Corp. has shown that **one negative customer review** on YouTube, Twitter, or Facebook can **cost** a company about **30 customers**.

# How do Employers Respond?

- **Denial**
  - Ignore it and it will all go away
- **Total control**
  - Block all uses by employees
- **No Control**
  - Allow everything to be used
- **No Compliance**
  - A detailed lengthy policy that no one reads or follows
- **Embrace**
  - Train
  - Official Sites for Company
  - Fit & mold social media for you, for your company





## Take the “cyber” out of it:

Notice is notice, no matter where you got it:

- ADEA
- ADA
- PDA
- Title VII
- FLSA
- FMLA
- Uniformed Services Employment & Reemployment Rights Act



# **Not So New Laws with Some New Tricks**

**First & Fourth  
Amendments**

**National Labor Relations  
Act**

**Stored Communications  
Act**

**FTC Guidelines on  
Advertising**

**Wiretap Act**

**Whistleblower  
Protections**

**Section 1030 CFAA**

**Ethical Considerations**

## New Laws & New Tricks

- Maryland Senate Bill 433 & House Bill 964 - Employer can't request password.
- Mississippi: Proposed a similar bill, **House Bill 165**. The bill failed in committee...
- Mississippi **Cyberbullying Laws**: Miss. Code Sections 97-45-15; 97-45-17; 97-45-33; and 97-29-45

# The Immaculate Log-in

**Facts:** A fiendishly clever Nun guesses an Employee's GMail password & accesses his personal account! Nun then terminates Employee.

**Result:** Violation of the Stored Communications Act. *Fisher v. Mount Olive Lutheran Church, Inc.*, 207 F. Supp. 2d 914 (W.D. Wis. 2002).

# The Pregnancy Proclamation

**Facts:** Supervisor “likes” Employee’s Facebook Post: “I love my boss, my job, & I’m pregnant!” Next day Supervisor terminates Employee.

**Result:** Supervisor will soon be defending a Pregnancy Discrimination Act claim.

# The Drunken Pirate

**Facts:** University warns about postings on social media, then denied teaching certificate because of MySpace photo.

**Result:** No problem. “Drunken Pirate you were ‘warned.’” *Snyder v. Millersville Univ.*, 2008 WL 5093140 (E.D. Pa. 2008).

# The Food Critic

## Facts:

Sales employee terminated after posting: “Sales event food: wieners and stale chips! Sucked! Miniature apples & caramel were good.”

## Result:

Could be protected “concerted activity” because “food” relates to Employee’s earnings. *Knauz BMW*, NLRB Case No. 13-CA-46452.



# The Sympathetic Supervisor

**Facts:** Following termination for poor performance, sympathetic supervisor recommends former employee on LinkedIn.

**Result:** We could have a problem.



# The “Wonderful” Employee

**Facts:** B.D. Employee anonymously posts on a product review site: “B.D.’s Power Points are the most reliable. I only buy B.D.!!”

**Result:** Failure to disclose “material connection” could violate new FTC Guidelines on Advertising, B.D. could be liable.

# The Timely Tweeter

**Facts:** Following interview, Employee Tweets: “Cisco just offered me a job! Now I have to weigh the utility of a fatty paycheck against the daily commute to San Jose and hating the work!”

**Result:** Cisco Manager Tweeted Back: “Who is the hiring manager? I’m sure they would love to know that you will hate the work. **We here at Cisco are versed in the web.**”

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