



Avoiding Social-Networking Snafus

By Karen Gieselman (Columbia)

On September 15, 2009, Facebook announced that it served 300 million users worldwide. By comparison, on October 1, 2009, the United States Census Bureau's website indicated that the population of the United States was approximately 307.5 million.

According to their website, over 50% of the site's users log onto Facebook in a given day, and the fastest growing demographic is users age 35 and older. Facebook also reports that worldwide, *each day*, more than 6 billion minutes are spent on Facebook, 2 billion photos are uploaded to the site and there are 40 million status updates. MySpace's website reports that it has nearly 125 million active users, including 65 million users in the United States.

The statistics leave little doubt that before you finish reading this article, one or more of your company's employees will have logged into Facebook, MySpace or another social networking website. Are they using social-networking sites appropriately or are they updating their status to complain about a patient or post pictures of a patient's x-ray?

The Twitter Trend

Despite the explosion in the popularity of social networking sites, a survey released in August, 2009, by the Health Care Compliance Association, and the Society of Corporate Compliance and Ethics, found that 50% of respondents' companies "[did] not have a policy for employee online activity outside of work" and only 10% reported having "a policy specifically addressing these types of social networking sites." Similarly, the survey results indicate that nearly half of the individuals surveyed reported that their company does not actively monitor Facebook and other social networking sites.

Despite the dearth of employer regulation of social-networking activities by employees, according to the HCCA survey, nearly one quarter of respondents have disciplined an employee as a direct result of activities on a social networking website. This figure proves that there are a significant number of employees who use social networking sites in a manner that can negatively impact the business and community reputation of an employer. Employers need to take proactive steps to manage the risks of inappropriate use.

Facebook Follies

Over the past year, the news has been filled with examples of employees who have imperiled the reputation of their employer through inappropriate postings, accidentally or intentionally, on social-networking websites. No industry has been immune. For example, in August last year a nurse at a Swedish medical facility posted over two dozen pictures of surgical operations on her Facebook account. In February, nurses at a

Wisconsin medical center were discharged after they took and posted on a social-networking site, pictures of a patient's x-rays showing the presence of an embarrassing foreign object in the patient.

And in June, another healthcare provider came under fire when a patient's relative accessed the webpage of a Facebook group comprised of nurses who worked at a facility that had recently treated his relative; he intended to leave a message thanking the nurses for the great care they provided. He never left his message because what he found on the website was at least one picture of a nurse making an inappropriate gesture over a patient.

These stories underscore the need to regulate use of social-networking sites and online activity. The need to adopt policies outlining the company's expectations for employee behavior is particularly important in the healthcare industry due to the obligations to protect patient privacy and laws such as HIPAA.

Balancing Interests

The popularity of sites such as Facebook and MySpace is a symptom of a larger growth of net-based activity by both employers and employees. Many employers have embraced the growth of net-based activity and the popularity of social-networking sites to develop a

corporate presence in cyberspace. Social-networking websites offer an opportunity to improve your hospital's community presence, launch new marketing campaigns, and improve patient access to information. Sites such as Facebook and MySpace offer your employees opportunities to interact with individuals in the same field, to exchange knowledge and ideas, and network.

Social media and net-based communication can be a positive and effective form of communication for both employers and employees; completely banning or significantly limiting employee use of social-networking websites, outside of work, can negatively impact employee morale and hurt business. When adopting any policy or procedure to monitor and police harmful online activity, weigh the risks of inappropriate online activity against the potential harm to employee relations if the company's efforts go too far and are perceived as excessively intruding into employees' private lives outside of work.

In other words, your approach must fall between the extremes of ignoring the problem and over-policing it. You don't want to emulate either the see-no-evil monkey, or Big Brother.

An Effective Approach

To manage the risk of employee use of social-networking sites, you must develop a specific policy governing usage of such sites, train

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If A Pandemic Strikes . . .

By Richele Taylor (Columbia)

With the advent of the H1N1 flu, businesses are preparing for the worst, and hospitals are not exempt from this preparation. While other employers will practice “social distancing,” or keeping away from other people’s germs, hospitals will be treating the worst H1N1 cases, exposing employees to the virus. Hospitals must have a continuity plan in place so that the facility can operate as normal. Pandemics can create staff shortages due to absences of sick employees and employees taking time off to care for sick family members. Suppliers may be short staffed too, and deliveries of products may be interrupted.

While many hospitals already have protocols in place for when a disaster or pandemic strikes, many healthcare entities are simply not ready. Creating a continuity plan takes time and effort. Fisher & Phillips offers a free, downloadable comprehensive checklist on its website under the article, *A Flu Update: Proactive Employer Preparations in Advance of a Potential Pandemic*. But for those health care organizations that are trying to prepare effectively in the short term or, do not have the resources to create a comprehensive continuity plan at this time, here is where you should start:

1. Check national and local government policies to see the impact they have on business operations and emergency plans. A good place to start is www.cdc.gov/h1n1flu.
2. Create a “contacts list” for government emergency response entities at local, regional, and national levels.
3. Consider how you will staff your business if there are many employee absences due to a pandemic. For example, besides employees with the flu, a school closure due to the flu may require multiple employees to stay home to care for family members. Think of alternative staffing arrangements should you have 20-40% of your staff home from work. You may consider creating a policy that you can roll out in the event a pandemic occurs addressing work shortages and how vacancies will be filled.
4. Review your leave policy and consider whether you should draft a separate policy providing non-punitive sick leave should a pandemic occur. You’ll want to encourage persons who develop symptoms to stay at home or leave work upon feeling sick, but employees may choose to stay at work if they do not have leave available, or are saving leave to use with sick children or other responsibilities.

Also, leave under the Family Medical Leave Act (FMLA) does not typically apply to cases of the flu. Would employees have enough sick leave to stay home for seven days under your organization’s policy? Don’t wait until the crisis occurs to create an alternate sick policy; have one that you can roll out if needed.



5. Train supervisors and managers on how to handle employees who seem sick. Other employees may go on a witch hunt if they believe a person is sick at work, especially with the media hype surrounding the H1N1 flu.¹ Hand out information from the CDC website on flu symptoms and what employees should do if they are sick as a gentle reminder for employees to stay home when sick.
6. Look at alternatives available to the company to assist in prevention. For example, placing hand sanitizers around the building in easy access places. Also, consider requiring employees to wear personal protective equipment, such as a face masks or gloves, should an outbreak occur within your organization, and make sure you have enough equipment on hand.

The preparation above is not enough to handle a true pandemic; it takes careful planning to prepare for staffing shortages and supply shortages or interruptions. Hopefully, these steps will help every organization begin the process.

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¹ And union hype. See the related article on how one union is trying to use the threat of a pandemic as an organizing tool.

Union's "Orchestrated" Refusal To Work Overtime Found Unlawful

By Michael Carrouth (Columbia)

A federal appeals court recently ruled that United Healthcare Workers – West, an affiliate of the Service Employees International Union (SEIU), violated federal law by telling housekeepers and linen aides at a San Francisco hospital to refuse to perform overtime work without giving the hospital ten-days prior notice. *SEIU, United Healthcare Workers – West vs. NLRB*.

Background Of The Dispute

In May, 2006, California Pacific Medical Center proposed a change in linen processing that the union contended violated a provision in the parties' collective bargaining agreement prohibiting the subcontracting of unit work. In opposing the hospital's proposed change, the union had a majority of its members sign a petition protesting the linen processing proposal and authorizing shop stewards to call rolling, one-week, stoppages in which union members would refuse to work overtime or extra shifts. This petition was submitted to hospital management on June 1 and 2, 2006.

On the following Monday, June 5, 2006, every housekeeper and linen aid who was asked to volunteer for overtime declined to do so. The employees continued these refusals for seven days. In conjunction with the refusals to work overtime, the union distributed a newsletter explaining that the workers' action was intended to protest the proposed subcontracting and a management-created manpower shortage.

In response, California Pacific filed an unfair labor practice charge against the union claiming that the refusal to work overtime violated the National Labor Relations Act (NLRA), which requires a union to provide timely notice of a concerted refusal to work. Section 8(g) of the NLRA requires unions to give any healthcare institution ten days written notice of any strike, picketing, or other concerted refusal to work, and to state the date and time such action will begin. In this case, the hospital received only four days notice.

At a hearing, an NLRB administrative law judge found that the union's actions violated Section 8(g). On appeal, the Board in Washington upheld the administrative law judge's decision in a 2-1 decision, and ordered the union to cease and desist from engaging in any concerted refusal to work at the hospitals without providing at least ten-days notice.

The Court's Decision

The union appealed the NLRB's decision to the U.S. Court of Appeals for the Ninth Circuit, raising two arguments. First, the union argued that the ten-day notice required by Section 8(g) was not applicable because the parties' collective bargaining agreement did not allow the hospital to impose mandatory overtime except in an emergency. The union contended that this meant that the hospital agreed that each employee could decline to perform overtime on an individual basis and that the union could direct its members to decline overtime on a collective basis without engaging in the type of refusal to work covered by Section 8(g).

Second, the union argued that the notice requirement in Section 8(g) was inapplicable because the union could not give effective notice of a concerted refusal to work overtime because it did not know the time and place the hospital would need overtime ten days in advance.

In rejecting these arguments, the appeals court agreed with the union that the notice requirements of Section 8(g) would not be triggered "in the event all employees, *acting independently*, were unwilling to volunteer for overtime." [emphasis added]. But the court found that the union members in this case "did not act on an individual basis," and that the refusal to work overtime was "orchestrated by the union."

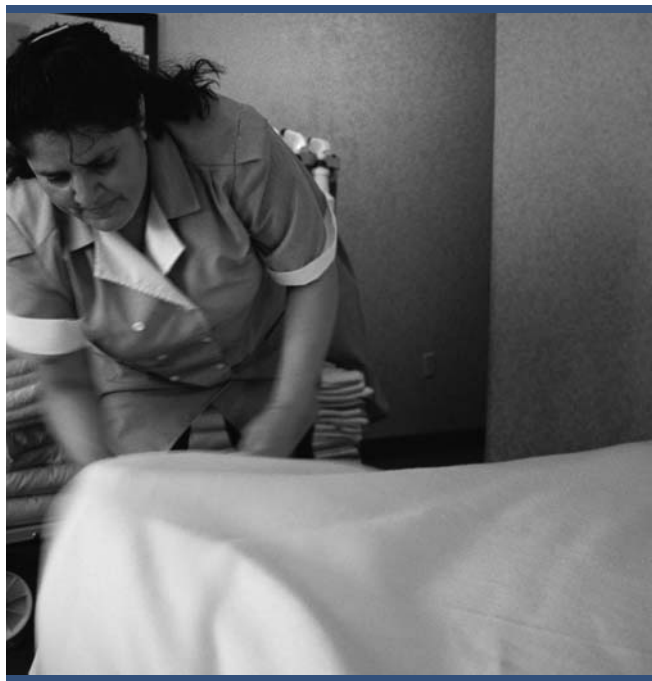
Similarly, the court rejected the union's argument that it could not give effective notice of a refusal to work overtime by finding that the union could have provided the ten-days notice required by Section 8(g) if it had simply given proper notice of the date when employees would start

declining overtime and had followed through with that plan. The court concluded that a notice of this type would have been sufficient even if the hospital had decided not to offer overtime on the dates specified.

The Fallout

For those managing healthcare facilities, the Ninth Circuit decision provides positive support for the protections to the public interest intended when Section 8(g) was created in 1974. But the court's acknowledgement that the notice requirement of Section 8(g) would not have been applicable if all employees, "acting independently," were unwilling to volunteer for overtime, opens the door for labor organizations to accomplish indirectly what the law precludes them from accomplishing directly.

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employees on its requirements, and insist on appropriate use of sites such as Facebook. All employers should already have policies governing employee use of the Internet at work and the sharing of information in a public forum. But most of the policies we've seen do not extend these rules to social media. Here are some ideas for an effective social-networking policy:

- require that all information posted or published by an employee comply with your existing policies governing use of confidential and proprietary information;
- prohibit reference to patients, directly or indirectly;
- ban use of the logos or trademarks of the company;
- require employees to have disclaimers clearly stating that views expressed belong to the author and do not represent the company;
- remind employees that their activities online reflect the company and its practice to patients and the greater community; and
- remind employees to be respectful of patients, co-workers, and the company's reputation at all times.

In addition to adopting a policy specifically governing social networking, employers should train employees on your expectations regarding use of internet-based social media and educate employees on appropriate vs. inappropriate use of social-networking sites.

More and more employees have grown up in an age where their eyes are affixed to a computer most of the day, but they have had little or no training on the risks and perils of oversharing in cyberspace. Employees who understand the personal and professional risks of inappropriate activity will be much more likely to self-regulate their online behavior.

Finally, in addition to adopting a policy on social-networking sites and training employees on appropriate use of web-based communication tools, you should routinely monitor your employees' online presence. Websites such as Google, allow companies to set up alerts that will send an email when the search terms identified in the alert appear in new web-based

content. Monitoring online content allows companies to take proactive steps to address negative content or comments, while also providing an opportunity to respond to positive content or comments with a note of appreciation or follow-up communication. Early notification of positive or negative commentary allows companies to have sufficient time to formulate an internal and/or external response to the communication.

Logging Off

All healthcare employers should carefully review their policies, as well as their practices for monitoring and handling postings on social networking sites, to ensure they are effectively managing the risks and maximizing the virtues of social networking and web-based communication. If you'd like help, give us a call.

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Swine Flu Threat Good For Unions?

By Richele Taylor (Columbia)

Using scare tactics to drum up fear has long been used by unions to generate unhappy employees, and to provide a good environment for unionization. Some unions are now using the H1N1 virus, or swine flu, to create controversy, rather than unifying and assisting hospitals and other industry employers in preparing for a possible pandemic. Finding a topic to exploit with workers is nothing new, and using a topic that scares many and can create a panic is just icing on the cake.

Unions are using the swine flu to their advantage, by reporting that healthcare organizations are unprepared to handle pandemics, and that workers are at risk. In fact, only days after the President's Council of Advisors on Science and Technology predicted nearly 2 million Americans could be hospitalized due to swine flu infections this winter, and as many as 90,000 could die, the California Nurses Association (CAN/NNOC) posted an article on its website claiming that hospitals are not prepared for an H1N1 flu, or swine flu season.

The CAN/NNOC website claims that "one-fourth of the hospitals" have inadequate isolation of the swine flu, and that nurses at 15% of the hospitals do not have access to proper respirator masks. Of course, there are very limited details as to how this information was obtained, such as how many hospitals were surveyed, what questions were asked, or whether the nurses asked those in charge to provide information or provided it based on their own knowledge.

The CAN/NNOC goes even further and invites nurse to attend various "actions" to demand that hospital administrators immediately implement safety improvements for nurses and patients. It is also attending legislative meetings and verbally demanding hospitals provide adequately for nurses in such a pandemic.

Hospitals and other industry employers need to be prepared for questions from employees on H1N1 flu and what the company is doing to be prepared for such a pandemic. Healthcare providers should also be ready to address concerns to the public should a demonstration occur outside the hospital. A well-placed piece in the local newspaper, or flyers inside the facility providing insight on what the hospital is doing, can be a good offensive measure to demonstrate that the hospital cares for its staff and patients, and can keep your organization from being an easy union target.

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