



# PRIVACY & SECURITY LAW



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## REPORT

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### *Internet*

#### **Rise of Twitter Highlights Need for Employers To Review, Update Social Networking Policies**

**T**he explosive growth in the popularity of online instant messaging service Twitter by employees raises concerns over the risk of company public embarrassment, liability, and the release of proprietary trade secret or other sensitive information, analysts told BNA.

The message employers should be getting, they said, is that Twitter—which allows users to send messages, known as “tweets,” of up to 140 characters in real time through the Internet to anyone who wants to read them—signals the need to update workplace electronic communications policies yet again. While messages posted on Twitter are brief, users often include short links to blogs and other Web sites that contain more details.

“Companies need to get in front of tools like Twitter and social networking in general and explain to employees what’s expected of them and where the lines are,” Jerry Stevenson, a director in the global HR technology and administration practice at Buck Consultants in Dallas, told BNA. “Let employees know what’s appropriate and what’s not appropriate when it comes to personal and business time.”

“This newest technology, whether it’s Twitter or what’s next, is based on past issues,” attorney Rex Stephens, a partner at Baker Hostetler in Orlando, Fla., said. Employers need to address Twitter the way they already have addressed “the big three—telephone use, e-mail, and the Internet,” he said.

Only a little more than a quarter of employers have put in place policies that address social media, according to the “2009 Employee Engagement Survey” released June 9 by Buck Consultants and the Research Foundation of the International Association of Business Communicators (IABC). Of the survey’s 1,477 respond-

ing employers worldwide, 45 percent do not have a social media policy, 28 percent are working on developing one, and 27 percent have a policy in place.

**Over 7 Million Twitter Users.** Nielsen Online reported in March that unique visitors to Twitter jumped 1,382 percent from February 2008, when there were 475 unique visitors, to February 2009, when there were 7 million. It also noted that the largest percentage of Twitter users were between the ages of 35 to 49, followed by those between the ages of 25 to 34.

Nielsen also reported that the majority of Twitter users visit the site while at work.

“Twitter is an excellent tool for a lot of things,” including research and getting the latest news, said Katherine Cooper Franklin, with Littler Mendelson in Seattle. “It keeps you current,” she said. “But we try very hard to get employees to separate blending the use of it for personal and business purposes. I would think you need to have two different accounts,” Franklin said.

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Attorney and Twitter aficionado Daniel A. Schwartz at Pullman & Comley LLP in Hartford, Conn., acknowledged that another online application will likely replace or supplement Twitter. “But I don’t think its usefulness now should be discounted by the fact that there will be something else in a couple of years,” he said.

**Twitter Raises Employer Concerns.** “One of the biggest challenges is what to do when an employee engages in online activity that in the employer’s view crosses the line between appropriate and inappropriate,” said Philip Gordon, the Denver-based chair of Littler Mendelson’s privacy and data protection practice group.

“That line may be different for different employers. So it’s a legal question and a corporate culture question.”

“Some companies really consider almost anything their employees do online to be just fine,” Gordon added. “Other companies have a very specific image they want to project to the public and will react strongly and negatively when an employee undercuts that image.”

Gordon encourages his clients to permit employees to engage in “some amount of controlled, nonbusiness use of the Internet and e-mail.”

“Everyone, from the CEO down to the janitor, uses corporate Internet access for nonbusiness reasons,” he said. “The more sensible approach is to recognize this fact and put reasonable restrictions on nonbusiness use.”

Gordon noted that “one of the things Twitter does is creates a record, particularly of people who are active to obsessive users who are posting tweets throughout the day.” This could prove useful to an employer that notices too many messages on the site from an employee during work hours, he said.

Deloitte LLP’s “Social networking and reputational risk in the workplace: 2009 Ethics & Workplace Survey,” released in May, reported that 61 percent of employees said they would not change what they do online even if employers monitored their social networking profiles or activities because “they know it’s not private, and have already made significant adjustments to their online profiles.” The survey included responses from over 2,000 employed adults.

“[A]ttempts to mitigate reputational risk in these online communities should include an emphasis on culture, values, and ethics within an organization,” Deloitte said.

A study released June 8 by the Seattle-based Institute for Corporate Productivity indicated that when it comes to social networking technology, leaks of confidential information is the biggest concern among companies with 10,000 or more employees. Conducted in May, the “Social Network Regulation Pulse Survey,” which included responses from 317 companies, indicated that large companies also are more fearful than smaller ones that social networking will damage their reputations.

This is all the more reason that employers should address Twitter in their social media policies, the analysts interviewed by BNA said.

**Business Opportunities.** Proponents of Twitter said that it offers employers numerous business opportunities.

Twitter allows users to quickly update people about unfolding events such as conference presentations, Stevenson said. For example, the Society for Human Resource Management is using Twitter to publicize its upcoming annual conference.

Companies such as Zappos.com, Comcast, JetBlue Airways, and Sun Microsystems have thriving Twitter accounts, which are free to establish.

Whole Foods Market offers a good example of how Twitter can be used effectively, Stevenson said. The Austin, Texas-based company uses Twitter, in addition

## *Advice to Employers*

### **What Twitter, Online Social Media Workplace Policies Should Include**

**S**ocial media policies generally should be short, straightforward, and advise employees not to share confidential or proprietary information about their employer or to talk negatively online about their co-workers, the company, competitors, or suppliers, Philip Gordon, privacy and data protection practice group chair, Littler Mendelson, in Denver told BNA.

In addition, Gordon and other analysts said policies should include the following:

- Any Twitter message, referred to as a “tweet,” mentioning the employer needs company approval. Rex Stephens, a partner at Baker Hostetler, in Orlando, Fla., said that unless the tweet is business-related, messages should not contain company logos, trademarks, or other images representing the organization without its approval.

- Employers should stipulate that employees include disclaimers with their online postings, Jerry Stevenson, a director in the global HR technology and administration practice at Buck Consultants in Dallas, advised. “Either in the biography or in their [personal] description, [employees should] be clear that these are their own opinions and they are not speaking for the company, assuming what they are saying is company-related,” he said.

- Tell employees that non-business use of the Internet is not private use and that it is subject to company policies, Gordon said. “People have to get their job done. It can’t interfere with their work and it does not take priority over business use,” he said. “It should be done, preferably during nonwork time—on their lunch hour or during break time or at the beginning of the day or when the day ends.”

- Use slightly less formal language when crafting a policy that addresses Twitter use outside of work. “Be a little bit more thoughtful about what you’re saying from an employee relations perspective,” Gordon explained. “You want to keep your workforce happy, particularly young employees for whom social media is an integral part of their life.”

to blogs and other social media, to communicate news and details about special events and as a forum for customer feedback.

Schwartz described Twitter as “a unique communications tool that, if used properly, can really help a company grow in outreach and brand marketing.”

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He publishes the Connecticut Employment Law Blog, which includes Twitter updates from Schwartz and comments from his 598 Twitter “followers,” who regularly receive his tweets.

BY RHONDA SMITH

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*The Buck Consultants/IABC “2009 Employee Engagement Survey” is available at <http://www.iabc.com/rf/>*

*pdf/EmployeeEngagement.pdf.*

*Deloitte’s “Social networking and reputational risk in the workplace: 2009 Ethics & Workplace Survey” is available at [http://www.deloitte.com/dtt/cda/doc/content/us\\_2009\\_ethics\\_workplace\\_survey\\_220509.pdf](http://www.deloitte.com/dtt/cda/doc/content/us_2009_ethics_workplace_survey_220509.pdf).*