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Social Media

Does your firm have a policy yet on the use of social media? More and more CPAs and staff are using LinkedIn, Facebook, blogs, and Twitter, among others—but do you understand the risk your firm could be faced with if you don't have a policy for the use of these tools?

Legal risks. Challenges posed by the growing use of social networks include public-relations risks raised by empowering a much wider range of employees to speak on behalf of the firm, as well as a variety of thorny new legal problems that are still in the process of being analyzed by the courts.

In the recruiting arena, the use of social networking sites as a way to learn more about potential hires has already raised concerns about what may legally be done with the information that could be learned by viewing an applicant's Facebook page, for instance.

Concerns about what is being said by employees is just one area of concern when it comes to the firm's reputation. A related challenge comes from new Federal Trade Commission guidelines that took effect Dec. 1, 2009.

The guidelines are designed to protect consumers from deceptive endorsements and advertising. The wide net of potential contacts that can be so attractive in reaching potential clients can become a large pool of potential problems if clients claim they were misled into purchasing dangerous or

defective products because of an employee's comments, pointed out John "Lou" Michels Jr., a partner with Baker & McKenzie in Chicago.

It isn't clear how this could translate into "dangerous" services provided by CPA firms, but in the current environment—where clients could be looking for someone to blame for financial woes—it pays to consider every possible risk.

The FTC suggested in comments on the guidelines that it would be unlikely to take action against a company for the conduct of a single "rogue" employee whose conduct violated an adequate company policy. However, the agency said it had brought enforcement actions against companies "whose failure to establish or maintain appropriate internal procedures" had resulted in consumer injury.

The guidelines apply to endorsements made using "new media" such as blogs and social networking sites, and FTC enforcement actions could be brought against a company whose employees comment on company products or services without disclosing the employment relationship, said Anthony E. DiResta, a partner with Manatt, Phelps, & Phillips in Washington, D.C., and a former FTC regional director.

Should your firm just say no? An outright ban of the use of some social media such as Facebook and Twitter is being considered by a growing number of organizations, despite the many attractions

to the use of these tools for marketing, branding, and recruiting purposes.

Companies are already cracking down on the use of these media, according to the findings of a survey of 1,400 CIOs released last fall by Robert Half Technology. That research found that 54 percent of U.S. companies have banned workers entirely from using social networking sites like Twitter, Facebook, LinkedIn, and MySpace while on the job.

The study also found that 19 percent of companies allow social networking use only for business purposes; only 16 permit limited personal use. Just 10 percent of the respondents indicated full use of social media is allowed for employees during work hours.

A driving force for outright bans seemed to be more concern about employees spending far too much time using social media rather than concern about legal damage being done to the organization.

Blocking the sites is another way that employers can deal with the temptation of social media during working hours. In August 2009, ScanSafe, a Web security software provider, reported a 20 percent increase in the number of companies blocking social networking sites over a six-month period, based on the processed Web requests received by the company. In fact, ScanSafe said that 76 percent of companies were blocking social networking sites.

Developing policies and procedures. Participants in a recent webinar, *Social Networking in the Workplace: Maximizing Benefits & Minimizing Legal Risks for Business*, sponsored by Pike & Fischer, a BNA subsidiary, described specific policies and practices that are helping control the use of social media for some employers who have opted to balance the risks with the rewards of social media.

Intel Corp. took an early and a "cautious, conservative approach" to the adoption of social networking tools, said Jackie Medecky, a senior attorney with the company.

Starting with the tools that would best suit the company's intranet, such as internal blogging to get users comfortable and gain experience, the company then moved to external tools after about a year, Medecky said.

Medecky noted that, as a technology company, Intel had many technologically savvy employees who were already familiar with social-networking tools and were willing and able to use them to talk about the company to the outside world.

The next step was to set up a blog, IT@Intel, aimed at Intel customers, featuring posts on the use of the company's products by members of its own information-technology department. After some careful preparation, the blog was launched and became a "huge hit," Medecky said.

"We wanted it to be an open and honest blog about the use of our technology, but we did talk through how to position it, how to talk about problems without overstating them, how not to give away our intellectual property," she said. "And it was wildly successful, an example of how to use employees with expertise and something to say."

After the success of IT@Intel, Intel took another step forward by allowing third parties to put their posts and comments on the Intel Web site, Medecky said. The company also recruited some outside voices to put their content on the Intel site, she said.

But as Intel encouraged a growing number of workers to speak for the company through social-networking tools, it also became increasingly important to create guidelines, procedures, and training programs for those who used these tools in order to protect the company from the many risks involved with their use.

"One of the things Intel did was to create a Social Media Center of Excellence," she said. "This is an internal group whose goal was to empower people, but also to institute guidelines and procedures so that we were protected as a company."

Setting Up a Social Media Policy

These guidelines are drawn from attorneys' advice about establishing policies and procedures governing the use of social media:

- Social networking policies should be separate from general technology use policies.
- Make it clear that employees should have no expectation of privacy when using the firm's equipment and resources.
- Both privacy and data security issues should be covered in your policies.
- Consider including specific language prohibiting employees from using e-mail or other technology for discrimination, harassment, or defamatory purposes, or in violation of copyright laws, or any other unlawful purpose.
- Be clear about the type of disclosure employees must include when they speak or blog about the firm.
- The policies should be written, implemented consistently throughout the organization, and monitored.

The SMCE also manages relationships with external social media partners, including Google, Facebook, and Twitter, creating strategies aimed at making the best use of Intel's presence on these sites, and at ensuring that the Intel group fully understands the goals of the interaction and their obligations, Medeck said.

IBM Corp. has taken a similar and cautious journey into the use of social media. At first, only the communications team spoke for the company. Today, IBM looks to employees throughout the company to "be the brand" through their use of social-networking tools, said Jane Edwards, legal counsel for IBM.

The use of social-networking tools at IBM has grown "exponentially," Edwards said, noting that the company has around 16,000 internal blogs, one million daily page views of an internal wiki site, and 60,000 employees who are "socially networked."

There is also widespread use of external social media sites and tools, including an IBM LinkedIn community with 250,000 members, 70,000 IBM employees on Facebook, and 40,000 on Xing, she said.

The company began these activities with its Business Conduct Guidelines, which already were in place before social media came onto the scene,

Edwards said. In 2005, the IBM blogging community began to sense the need for guidelines as to how to behave in the "blogosphere," which led to the creation of the company's Blogging Guidelines.

These guidelines covered in a "practical, commonsense way" what to do as an IBM blogger, reminding bloggers to "be responsible for what you write, remember that what you write will stay published for a long, long time, identify yourself, respect copyright and fair-use and financial-disclosure laws, and so on," Edwards said.

The blogging guidelines later developed into the company's Social Computing Guidelines, and were then joined in 2007 by a separate set of Virtual World Guidelines covering issues related to the use of avatars and conducting business in virtual worlds, she said. Control and guidelines that are developed and enforced can allow your organization to reap the benefits of social networking. (For more on establishing these guidelines see the sidebar).

A recording of the webinar, *Social Networking in the Workplace: Maximizing Benefits & Minimizing Legal Risks for Business*, sponsored by Pike & Fischer, a BNA subsidiary, is available for purchase at www.pf.com/eventDetail.asp?id=102&type=2.

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