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Social Media Compliance Policies: Your Company Needs One

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Use of social media is ubiquitous in today's society. This is astounding when you think back to 2004 and realize that social media did not exist then. Fast forward ten years and by September 2014, 58% of all American adults ages 18 and older used Facebook, 23% used LinkedIn, 22% used Pinterest, 21% used Instagram and 19% used Twitter, according to a study conducted by the Pew Research Center. And these numbers are rising.

Why does this matter to companies? Because, based on the numbers, it is likely that a large percentage of people employed at any given company use social media on a regular basis. Social media usage by company employees, when left unchecked, has had disastrous consequences. For example, in 2009, two Domino's Pizza employees posted a video on YouTube showing themselves committing various health code violations while preparing customers' food in the Domino's kitchen. The video showed one employee passing gas, smearing nasal mucous on sandwiches and putting cheese up his nose while the other employee narrated the video. The public's reaction was swift and harsh. This impacted both Domino's sales and reputation. As Domino's quickly realized, social media has the ability to turn what were previously small, private, company matters into a very public marketing crisis.

According to a recent report published by the NYSE Governance Services in *Corporate Board Member Magazine* for the 2nd quarter of 2015, 91% of directors and 79% of general counsel surveyed believe they do *not* have a thorough understanding of the social media risks their companies face. Ten percent of directors indicated they are *not* confident in their general counsel's ability to handle the company's social media risks. The process of adopting a social media compliance policy can educate company management and personnel about the social media risks faced by the company, as well as how to mitigate such risks.

Crafting and implementing a social media compliance policy is the first and most important step companies can take to avoid situations like the one Domino's faced. A social media compliance policy is a corporate code of conduct that sets forth a company's prescribed practices for employees who post company-related content on social media platforms, whether through company or private accounts. These policies are intended to protect the interests of the company, but they can also help raise awareness of a company's brand, minimize loss of employee productivity and help the company avoid tricky legal situations.

First and foremost, by setting forth standards of conduct, an effective social media compliance policy helps protect your company's business reputation. As Domino's learned in 2009, offensive behavior and image issues are among the most common problems associated with social media usage by company employees. An effective policy should clearly state what is or is not acceptable information to be shared on social media platforms. A policy should also set forth the procedures to be followed before any official company social media post can be released to the public. This can help avoid social media gaffes, like the one Celeb Boutique committed in July of 2012. Shortly after the movie theatre shooting in Aurora, Colorado, Celeb Boutique, a women's apparel company, posted the following Tweet: "#Aurora is trending, clearly about our Kim K inspired #Aurora dress." #Aurora was trending on social media – unfortunately, the employee who posted the Tweet failed to check *why* it was a trending topic. Clearly #Aurora was not trending because of Kim Kardashian, but because of a horrific act of violence. Mistakes like this, among many others, can be avoided by implementing a clear set of guidelines to be followed by your employees when posting on social media.

While protecting a company's brand is an important element of any social media compliance policy, these policies can also be used offensively to boost awareness of your company and its products. A social media compliance policy should inform and educate employees about ways to use social media to boost brand awareness and direct traffic to your company's website. Reposting and re-Tweeting favorable articles about a company's services or products is a simple way employees can use social media to promote your company's business. Additionally, encouraging employees to monitor and quickly respond to customer feedback online is another way employees can use social media to connect with your customers and raise your social media profile in a beneficial manner.

Social media compliance policies can also serve to protect your company's bottom line. According to the findings from social media behavioral researcher Tom Webster and the team at Edison Research, 22% of Americans use social networking sites several times per day and 23% of Facebook's users check their accounts five or more times per day. This adds up to a lot of lost productivity. A social media policy should state whether or not employees are allowed to be on social media while at work, and if so, for how long. Some social media policies also limit the number of authorized employees permitted to post on the company's social media accounts in order to cut down on the amount of employee time spent on social media.

Although there are many great aspects of social media, it can also place companies in difficult legal situations they never faced prior to the rise of online social media. For example, Gene Morphis, ex-CFO of fashion retailer Francesca's posted the following Tweet after a good board meeting: "Board meeting. Good numbers = Happy Board." The problem with this Tweet was that the company's earnings had not yet been made public to its investors; therefore Mr. Morphis had inadvertently shared insider information publicly. Francesca's fired Mr. Morphis shortly thereafter. This entire scenario could have been avoided if a social media compliance policy had been instituted and followed.

It is also important to recognize that different industries have different issues and standards that have been implemented regarding social media. For example, the National Labor Relations Board has determined that the protections provided by federal labor law extend to work-related conversations on social media. As a result, management cannot infringe upon an employee's protected speech even if it has a detrimental effect on the company in the public's eye. In the financial industry, FINRA regulatory notices 10-06 and 11-39 require that all static content (such as Facebook and LinkedIn profiles) must obtain documented pre-approval before they can be posted. In comparison, interactive content (the stream of updates to Twitter, LinkedIn and other platforms) does not need prior approval before posting, but must be monitored and sampled regularly for compliance violations. And, regardless of whether content is static or interactive, SEC Rule 17a-4(b) dictates all employees' business communications on social media must be archived for a minimum of three years. Based on the industry a company is in, its social media compliance policy should address and educate employees about the legal and regulatory requirements that apply to the company's social media presence.

Adopting a social media compliance policy is a great start, but it is just the beginning. First, to ensure that the policy is effectively implemented, companies must educate their employees about the policy, which includes explaining the policy's purpose and the consequences associated with violating it. Second, companies must regularly monitor social media in order to ensure that employees are following the policy. There are a variety of monitoring services, like Radian6, Cision and Vocus, which allow a company to set up online key word searches associated with a company and to identify issues online that may cause a negative reaction, thus enabling a company to respond quickly and efficiently. Finally, social media compliance policies must be updated regularly to keep up with the ever-changing social media landscape.

Unfortunately, there is no one-size-fits-all social media compliance policy. Some policies are voluminous, describing every facet imaginable of social media usage, while other policies are more succinct. The Twitter policy at Zappos simply says "Be real and use your best judgment." Ideally, an effective social media

compliance policy covers two arenas: (1) social media activity in the workplace, and (2) social media conduct outside of work. Companies should seek legal counsel to help create a policy that is tailored to the company for its specific brand and industry.