



ELARBEE THOMPSON

# Social Media in Today's Workplace

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facebook



LinkedIn

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# Social Media



## What is “Social Media”?

- Social media is an umbrella term for “media designed to be disseminated through social interaction \*\*\* using Internet and web-based technologies.”  
[www.wikipedia.org](http://www.wikipedia.org)
- Note the source!
  - ✓ a/k/a: “Web 2.0,” “User Generated Content,” and the “Attention Age”

## What Does That Mean?

- One-way or two-way communication through use of computer technology
- The user may also be a “contributor”
- Anyone can be a source or resource
- A platform for opinions or ideas
  - ✓ Examples: Facebook, Twitter, and LinkedIn

## Facebook Basics

- Users can add “friends”, send messages, update personal profiles, and join groups.
- Static pages can also be created
- As of January 2011, Facebook had more than 600 million active users worldwide.
- Most used social network worldwide and now open to anyone 13 yrs and older.
- Facebook had an estimated 138.9 million monthly unique visitors in May 2011.

# Facebook Page

The image shows a screenshot of Mark Zuckerberg's Facebook profile page. The page is titled "facebook" and "Mark Zuckerberg's Profile" with "Harvard" listed as his location. The left sidebar contains navigation links like "My Profile", "My Friends", and "My Photos". The main content area features a profile picture of Mark Zuckerberg, a "Status" section with a message "Mark isn't receiving Facebook texts right now.", and a "Harvard Friends" section. The right sidebar contains detailed information sections: "Information", "Account Info", "Basic Info", "Contact Info", "Personal Info", and "Education Info".

**facebook** home search browse invite help logout

Mark Zuckerberg's Profile Harvard

**Information**

**Account Info**  
 Name: Mark Zuckerberg [add to friends]  
 Network: Harvard Facebook  
 San Francisco, CA  
 Last Update: August 14, 2006

**Basic Info**  
 Sex: Male  
 Relationship Status: In a Relationship  
 Residence: Kirland  
 Birthday: May 14, 1984  
 Hometown: Dobbs Ferry, NY

**Contact Info**  
 Email: mzuckerb@fas.harvard.edu

**Personal Info**  
 Activities: lots of facebook  
 Interests: information flow, exponential growth, minimalism, meditation, driving, writing, making things, social dynamics, domination  
 Favorite Music: green day, franz ferdinand, weezer, fall out boy, my chemical romance  
 Favorite Books: mostly biographies and textbooks  
 Favorite Quotes: never run out of ammo.

**Education Info**  
 College: Harvard  
 Psychology, Computer Science  
 Philips Exeter Academy '02

**Work Info**  
 Company: Facebook  
 Time Period: 2004 - Present  
 Description: i like making things.

View More Photos of Mark (181)  
 View All Mark's Friends  
 Send Mark a Message  
 Poke Him!  
 Add Mark as a Friend  
 Report this Person

**Status**  
 Mark isn't receiving Facebook texts right now.

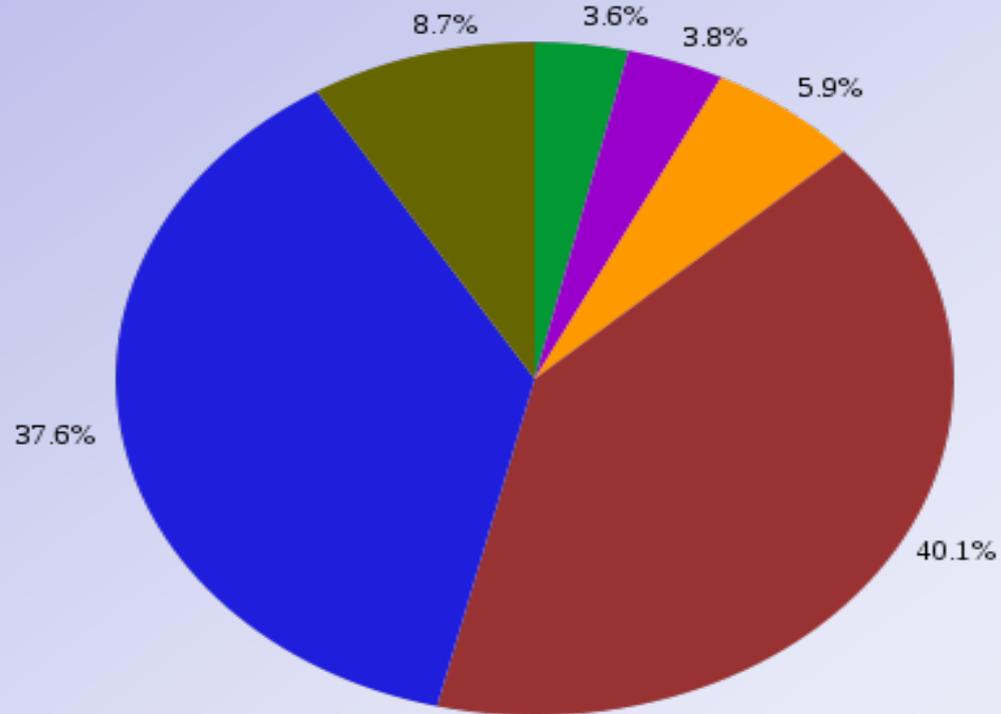
**Harvard Friends**  
 146 friends at Harvard [See All]

**Study where you want.**  
 Earn a degree at University of Phoenix Online.

## Twitter Basics

- Twitter is a free social networking service enabling users to send and read messages known as “tweets.”
- Tweets are text-based posts of up to 140 characters displayed on the user’s profile page/sent to author’s “followers.”
- Twitter has gained popularity worldwide and has more than 200 million users, generating 190 million tweets per day.

# Twitter Use By Category – Guess?



# Surprise

- 40.1% - Pointless babble
- 37.6% - Conversation
- 8.7% - Pass along value
- 5.9% - Self-promotion
- 3.8% - Spam
- 3.6% - News

## Linked In Basics

- LinkedIn is a business oriented social networking site mainly used for professional networking.
- As of March 2011, LinkedIn had more than 100 million registered users, spanning more than 200 countries and territories worldwide.

## More Linked In

- Purpose of LinkedIn is to allow users to maintain a list (called “connections”) of contact details on people they know and trust.
- LinkedIn has 21.4 million unique monthly U.S. visitors and 47.6 million globally.

## Existing Laws That Apply to Social Media

- State and federal laws & your own policies
- Industry-specific laws, guidelines, and ratings
- Media-specific guidelines (mobile marketing)
- Right of publicity, right of privacy, defamation
- Copyright, trademark, patent & contract law
- Self-regulatory programs
- International laws

## Your Privacy Policy

- Your privacy policy governs your actions.
- The FTC has brought 100+ enforcement actions against companies that fail to comply with their own privacy policies.
- Class action lawsuits also target companies that make privacy promises and then fail to adhere to those promises.

## Tread Lightly

- Collecting, storing and using data
  - ✓ Ask your service providers what they are doing!
- Third party rights (individual vs business)
  - ✓ Can you repost content/photos? Read the fine print!
- Promotions, contests and testimonials (New!)
- Minors and others
- Location information

## Monitor and Develop a Response Plan



## Best Practices

- Monitor, monitor, monitor
- Consider a static page first
- Develop & follow privacy and social media policies
- Develop an escalation plan (IT, HR, PR)
- Obtain releases before posting pictures
  - ✓ Employees vs. volunteers vs. general public

## U.S. Employer Response To Social Media

- 36% use social media to see what current employees are sharing online.
- 25% use social media to check background of prospective employees.
- 40% block employee access to social media.
- 26% encourage employees to use social media for business purposes.
- **69% do not have a written social media policy.**

Source: Russell Herder and Ethos Business Law: "Social Media: Embracing the Opportunities, Averting the Risks"

## Eagles' Employee Lays an Egg

- Philadelphia Eagles' Fan Dan upset team traded player Brian Dawkins.
- Changed his Facebook status to read: "Dan is [expletive] devastated about Dawkins signing with Denver...Dam Eagles R Retarded!!"

## “Dam” Dan

Problem? Eagles’  
Fan Dan worked for  
the team as a  
stadium gate chief.



## Egg On Face?

- Eagles management found out about Facebook posting and terminated Eagles' Fan Dan over the phone.
- Question = Can employers consider an employee's use of text messages and social media when making employment-related decisions?
- Answer = Generally, yes, but ...

## Legal Limitations

- You cannot discipline or discharge an employee for using Social Media to share with co-workers messages, images, graphics, etc. that are connected to employment or express intent to raise issues with management.
- You cannot retaliate for use of Employer name, address, photo, logo, or other identifying information.

# WHAT!?!

## National Labor Relations Act (NLRA)

- Not just for Unions anymore.
- The NLRA is enforced by the National Labor Relations Board and is applicable to all employees – whether they are members of a Union or not.
- Yes, even your employees.

# NLRA

- Is employee engaging in “protected concerted activity”?
- For purpose of collective bargaining or “mutual aid and protection”?
- Example – an employee photographed co-worker with cell phone to induce group action on dress code enforcement, is it protected?

## How Did We Get Here

### “Facebook Firing” case:

- After ambulance service employee posted negative comments about her supervisor, she was fired.
- NLRB complaint alleged the discussion on Facebook was protected concerted activity and employer had an unlawful policy regarding disparagement of employer.
- Settlement reached by parties that required employer to revise its rules.

## Tweet Lightly

### “Twitter Termination” upheld:

- Newspaper reporter was terminated for posting “unprofessional” tweets critical of paper’s headlines.
- NLRB concluded that employee was discharged for misconduct and not protected concerted activity.
- *Lee Enterps. Inc. dba Arizona Daily Star*, No. 28-CA-23267.

# Falling Into A Lawsuit

- Discovery of “unnecessary” information not otherwise know.
- Pregnant? Divorcing? Sexual Orientation?
- Views on race, religion, immigration, etc.
- Disabilities?

## Pre-Employment Internet Screening

- 45% of 2,600 hiring managers surveyed by CareerBuilder.com reported using social networking sites to research job candidates' backgrounds for information to verify or supplement resume information.
- Note: Not all applicants tell the truth!

## **Disparate Impact Claims**

- Employer's relying on web based social and professional networks for recruiting efforts – beware of potential discrimination claims.
- 5 percent of LinkedIn users are African Americans and only 2 percent are Hispanic.
- Use various advertising avenues for job openings to cast “wide net” for applicants.

## Discrimination Claims

- Do not disqualify an applicant based on a protected status revealed in internet/social media screening process (or otherwise).
- MIT study – gay men identified solely by their Facebook friends - even if other information is set to “private.”

# Pre-Employment Applicant Screening

- Have non-decision maker conduct search, filtering out protected class information.
- Hiring decision must be supported by: (1) legitimate, non-discriminatory reason(s), and (2) documentation.
- You must comply with the FCRA requirements.
- Verify identity!

## **Pre-Employment: Screening Policy**

- Apply a pre-employment policy consistently (screen all or none);
- Train HR employees and supervisors;
- Separate employee performing the social media background check from the hiring “decision makers;”
- Verify information obtained on social media – not all information is accurate.

# Anything Else?

- You bet.
- Welcome to the world where employees never truly leave employment.
- Social Media can leave you asking: “Where did all the payphones go?”

## Workplace Harassment Issues

- Recognizing and preventing harassment in the workplace – can include social media, personal cell phones, iPads.
- Focus: Can be on-duty **or** off-duty conduct, if employee's actions involve people in the same workplace.
- **Key:** Dignity and Respect.



## What NOT To Do?

- Displays of nude or obscene photos, including on employee's personal cell or smart phones.
- Sexual comments, innuendoes and gestures.
- Profane and sexually charged language.
- Bullying or threats toward coworkers.

## We Must Be Joking, Right?

- “Sexting” others in same workplace from employee’s personal cell or smart phones.
- Offensive “Cyber bullying” = Facebook/Twitter posts about co-workers or members of public;
- Using E-mail or Internet to otherwise engage in harassment.

D'oh!



## Brett Favre

- Claim: QB Brett Favre sent several sexually explicit voicemails, texts and graphic pictures to Jets reporter Jenn Sterger in 2008.
- Result: Favre fined \$50,000 for his failing to cooperate in the investigation.

## Investigation

- Issue: Whether Brett Favre engaged in alleged conduct, and, if so, did he engage in “sexual harassment” when they both worked for the New York Jets in 2008?
- Breaking News: Lawsuit now filed against Favre by massage therapists hired by Jets.
- Key: Employees’ off-duty conduct can become unlawful to extent it involves people related to the workplace.

## How Do We Avoid The Pitfalls?

- Develop a Social Media Policy that's right for your organization.
- Implement the Policy.
- Follow it.

# Basic Policy Contents

- Disclaimer: “The postings on this site are my own and do not necessarily represent the views of my employer.”
- Use shall not interfere with job responsibilities.
- Compliance with other applicable policies.
- Record retention.
- Have all employees sign acknowledgment of receipt.

# Social Media Use Guidelines

1. Adopt a Social Media Policy and reference related policies (computers, harassment, social media, etc.).
2. Notify employees to avoid making postings on social media sites that claim to represent the Employer's viewpoint.
3. Using social media to threaten or discriminate against others associated with the workplace is strictly prohibited.

## Carry On

4. Do not use the Employer's logo or photos, audio, or video taken at work or during working time without authorization.
5. Confidential information learned in the workplace should not be shared on social media or through phone texts.

## **. . . And**

6. Be respectful regarding customers, employees, volunteers, vendors, and service providers.
7. Personal statements of opinion on civic affairs should state they are employee's own thoughts and not that of the Employer.
8. Excessive use of social media during working time is prohibited.

# Finally

9. Social Media policy and related violations may result in discipline up to and including discharge from employment.
10. Don't forget to comply with potential duty-to-bargain and/or labor agreement provisions.

## End Product

- NLRB requires the policy to be carefully drafted and narrowly tailored to meet legitimate purposes without use of ambiguous terms.
- Cannot prohibit “disparaging comments,” “offensive conduct,” “rude or discourteous behavior,” “disrespectful conduct,” or “inappropriate discussions”.
- Cannot prohibit posting about co-workers, supervisors, company, rules, policies, wages, benefits, etc.

**Any Questions?**



Thank you!



## For More Information:

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

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Email [andrea.pendleton@pbpatl.org](mailto:andrea.pendleton@pbpatl.org) to be added to our mailing list and receive information about upcoming workshops and webcasts.