

Think Global ...
Buy Local

Pontiac Chamber of Commerce



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Social Media Risks

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Seven Social Media Risks and Tips

LISA C. CABEL

A recent U.K. study by global business law firm DLA Piper found that, of employees who use social media for personal use, 28% have posted photos of colleagues or business activities, 22% have posted a status update or tweeted about a colleague, 14% have posted a status update or tweeted about work issues, and 1% have posted confidential information. The numbers are likely similar in Canada.

In many cases, the use of social media in the workplace has resulted in “time theft” or breaches in privacy or confidentiality rights of co-workers and has negatively affected an employer’s business. Here are seven challenges and strategies to minimize employer risk and liability.

1. Off-duty conduct

The general principle relating to employees’ off-duty conduct has been that what employees do on their own time is their business. Employers must respect the legal rights of employees to create or participate in blogs or online social networks.

However, employers are justified in addressing employee off-duty online conduct when it negatively affects the employment relationship, including the legitimate business interests or reputation of the employer, depending on the seriousness of the misconduct and the nature of the employee’s position.

In EV Logistics and Retail Wholesale Union, Loc. 580 (Re), an employee was terminated after his employer discovered that he had a blog that contained racist and offensive

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Chamber Events

Quarterly General Meeting

Thursday, September 27 – 6:30 pm

Pontiac Community Hall – Luskville

Guest Speakers:

Don McColgan – Quyon Ferry

Joanne Labadie – Lavender Ridge Farms

These local speakers will be talking about the changes coming to their individual businesses.

Networking and social time – a light meal will be provided, hosted by the Municipality of Pontiac.

Meeting followed by a wine tasting hosted by Lavender Ridge Winery.



2012 Entrepreneurship Week

October 15-19

More details to come.



2012 Chamber Business Achievement Awards Gala

Friday, October 19

Norway Bay Golf Club

Awards in nine categories – see web site for criteria and forms. Deadline for nominations is September 28th.

Tickets available soon – more details to come.



Christmas Shopping in the Pontiac

Saturday, October 27th

Businesses in the Pontiac will offer discounts on that day. More details to come.



2012 Chamber Holiday Party

Saturday, November 17

Watch for further details.

Business Events

Monthly SADC Business Breakfast

First Wednesday of the month

7:30 am

SADC Office – Campbell’s Bay

If you have a business or Pontiac event you would like advertised, please contact the chamber.

comments glorifying Nazi Germany. The arbitrator found that even though the hateful remarks were not directed at the employer, there was a connection between the blog and the individual's employment because he had mentioned the employer and posted photos of himself at work.

The arbitrator also found that the employee's online conduct "adversely impacts on the legitimate business interests of the employer" and noted that harm from the employee's conduct could be presumed because there was public access to the postings.

However, the employee was suspended rather than terminated because he was 22 years old, suffered from depression, had difficult family circumstances and apologized for his actions.

2. Privacy issues

Online activity by employees raises privacy issues, because information posted online may be considered "personal information" under federal and provincial privacy laws. Generally, federally regulated employers are governed by the Personal Information Protection and Electronic Documents Act and provincially regulated employers are subject to provincial privacy legislation, which now exists only in Alberta, B.C. and Quebec.

Federal and provincial privacy legislation place substantially similar requirements on employers with respect to the collection, use and disclosure of employees' personal information. First, an employer may collect, use or disclose personal information only with the consent of the individual, unless the information falls into several exceptions.

Second, the employer must collect, use and disclose personal information only in a manner and for a purpose that a reasonable person would consider appropriate in the circumstances.

Provinces such as B.C. and Manitoba also have a statutory tort of invasion of privacy. In *Jones v. Tsige*, the Ontario Court of Appeal affirmed the existence of a tort of "intrusion upon seclusion" in Ontario when a bank employee repeatedly viewed a co-worker's banking information without authorization (the co-worker was the ex-wife of the employee's boyfriend).

The court found that the defendant employee had committed the wrongful action and breached the co-worker's privacy. The court set out the elements of the tort of intrusion upon seclusion as intentional or reckless conduct on the part of the defendant; any action that invaded the plaintiff's private

affairs or concerns without lawful justification; and any action that a reasonable person would regard as highly offensive or causing distress, humiliation or anguish.

Although it's unclear how the tort of invasion of privacy will work in the employment context, the common law right to privacy suggests that, at least in Ontario, online activities may be found to be in breach of other employees' or the employer's privacy interests.

3. Human rights issues

Human rights legislation across Canada prohibits discrimination in employment based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability. Also, in many provinces and territories, discrimination is prohibited based on a criminal record or "source of income/social condition."

If an employer makes (or is perceived to make) a hiring decision based on online information relating to these grounds, the employer may be exposed to human rights liability. Employers should consider that information obtained through social media may fall within a protected ground.

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Support for Pontiac Businesses

The Chamber has submitted the following resolution in support of businesses in the Pontiac relating to the drought situation.

The Pontiac Chamber of Commerce continues to be a strong and growing collective voice of business in the MRC. With this clear understanding, we have formulated a resolution as of August 16, 2012 in regards to the present state of affairs affecting our local market place, post the July drought period.

Resolution

The Pontiac Chamber of Commerce has read and supports the M.R.C.'s resolution acknowledging the current and urgent state of affairs created by the prolonged lack of sufficient rainfall in our region. We underscore that with this added strain on our local business community there is an immediate and pressing need for financial aid among other forms of available assistance. There must be an expedited, collaborative and if required, an independent effort made by all able organizations and levels of government to provide this relief to those businesses most affected, starting with the farming business community. Support given to them will directly impact those businesses created and sustained by the very large and necessary agriculture industry. (#CCP-12-08-16-1)

4. Labour issues

Most labour legislation in Canada contains provisions prohibiting discrimination against an employee based on involvement with a trade union, so online postings in this area would likely be protected under these laws.

In *Lougheed Imports Ltd. (West Coast Mazda) v. United Food and Commercial Workers International Union, Local 1518*, two employees who were union supporters made a number of Facebook posts that contained derogatory comments about their employer and threatened violence in the workplace. The employer monitored their online activities without notification and then terminated them, around the time that the employer received a union certification notice from the labour board.

The union alleged that the terminations were motivated by anti-union animosity, conduct prohibited by the B.C. Labour Relations Code. The board, however, did not find that the employer was motivated by anti-union animosity. It found that the employees' online conduct had irreparably breached their relationship with the employer and was cause for termination.

5. Defamation

Statements posted online that negatively affect the reputation or image of another person, business or product may be considered defamatory.

In *DHL Express (Canada) Ltd. and C.A.W., Local 4215*, the grievor, a local unit chair and vice-president, sent a series of emails to management personnel (copying many other company employees) in which he used profanity, called company management "puppets" and used highly volatile language.

The arbitrator found that the statements made about management amounted to legal libel, potentially

giving rise to a civil action for damages, and that the grievor had overstepped the bounds of acceptable discourse even though he was acting in his capacity as a union representative. The arbitrator upheld the company's decision to suspend the grievor without pay for 30 days based on his online conduct.

6. Harassment

Employees' online activities may constitute harassment or bullying for which an employer may be found liable, possibly also leading to complaints under applicable harassment, workplace violence or bullying legislation.

In *McIntosh v. Metro Aluminum Products Ltd.*, where the owner and manager of a company was found to have sexually harassed an employee by sending her unwelcome text messages with sexual propositions and offensive comments, the B.C.

Human Rights Tribunal found both the employee and the company liable for harassment. It also noted that the company did not have a harassment and human rights policy in place, encouraging it to institute such a policy to fulfill its role in safeguarding against inappropriate workplace communications and conduct.

7. Cyber-sabotage

Cyber-sabotage refers to using technology, including social media, to deliberately inflict harm on an organization. Manifestations in an employment context include cyber-bullying, "cybordination," data theft and data destruction.

In the *Lougheed Imports Ltd. (West Coast Mazda) v. United Food and Commercial Workers International Union, Local 1518* case cited earlier, two employees made a number of Facebook posts in which they made derogatory comments about their employer and suggested violence.

The labour relations board found that the Facebook comments were

"offensive and egregious" and justified "proper cause."

The Ontario Superior Court of Justice has also held, in *Leduc v. Roman*, that a user sharing information by way of Facebook does not have "a serious expectation of privacy."

To mitigate all of these risks, employers should consider implementing policies to address off-duty conduct relating to social media and confidential information, including the following: reminding employees that the employer monitors online communications; reiterating the employee's duty of loyalty to the employer; reiterating policies on harassment, intellectual property, IT/computer use, conflicts of interest and privacy; prohibiting employees from using company-owned resources for social networking or blogging while at work or from posting material that may violate the privacy rights of other employees, including photographs or videos taken at work or company social events; and warning employees that any breach of the policy may result in discipline up to and including termination.

Employees' increased use of social media presents new legal challenges, including employer vulnerabilities in the human rights, privacy and workplace safety contexts. However, the law has adapted to this new landscape and has affirmed the employer's right to discipline employees who—by virtue of their online conduct—have a negative impact on the employment relationship, the employer's legitimate business interests or reputation, and the privacy or safety of employees.

LISA C. CABEL IS A PARTNER WITH BORDEN LADNER GERVAIS (BLG). LCABEL@BLG.COM (WITH FILES FROM MARIA GERGIN, BLG ARTICLING STUDENT) <http://www.benefitscanada.com/benefits/other/seven-social-media-legal-risks%E2%80%94tips-29673>

All Pontiac Businesses Welcome!

Quarterly General Meeting

Thursday, September 27 – 6:30 pm

Pontiac Community Hall, 2024 Hwy 148, Luskville

Guest Speakers:

Don McColgan – Quyon Ferry

Joanne Labadie – Vignoble Lavender Ridge Winery

These local businesses will be talking about the changes coming to their individual businesses.

6:30 pm Networking and social time — a light meal will be provided, hosted by the Municipality of Pontiac

7:00 pm Quarterly General Member Meeting: Information on upcoming events and updates on Chamber business.

7:30 pm Guest speakers – followed by a wine tasting hosted by Lavender Ridge Winery.

RSVP by September 21, 2012

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2012 Chamber Business Achievement Awards Gala

The Pontiac Chamber of Commerce recognizes the importance of highlighting the outstanding achievements in our business community. In effort to publicly acknowledge the superior efforts of these businesses and individuals, the Chamber of Commerce, with financial support from the CLD, the SADC, and Emploi Quebec, has created an annual Awards Gala Ceremony. This semi-formal event will take place during “Entrepreneurship Week” on October 19th.

We are requesting that the public nominate a business or businesses to receive an award. Nominations will be accepted until September

28th, for the following 9 categories:

- Young Entrepreneur of the Year
- Self-Employed Business Person
- Small Business
- Medium Business
- Large Business
- New Business of the Year
- Farm Enterprise of the Year
- 2012 Feature Award – Skilled Trades Employer of the Year
- Lifetime Achievement Award

For information and forms please see the Chamber web site (www.pontiacchamberofcommerce.ca).

Official deadline September 28th

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Welcome to the Chamber!

Businesses who have joined the chamber since the last newsletter.

Claudia Flemming Floral designs

Cody Berube – Investors Group

Do-It-Construction

Epic rie Chichester

Hotel Ladysmith

Tru-Line Collision

Check the chamber web site for links to these businesses.

Support your local businesses!

News, article suggestions and letters to the editor are welcomed and encouraged. Content will be edited to fit the space available. We welcome press releases and news from our local business community.

Chamber Benefits

Being a member of the Pontiac Chamber of Commerce means that you are also affiliated with the Canadian Chamber of Commerce (CCC) — www.chamber.ca and the Quebec Chamber of Commerce (FCCQ) — www.fccq.ca. You and your business can take advantage of benefits listed on their web sites.



Group Insurance Benefits

Visit the new web site / view the video!

http://www.chambers.ca

Would Like to Join the Chamber?

Membership fee of \$100 entitles you to all chamber benefits. Membership valid from April 1st to March 31st.

Contact info:

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Think Global ... Buy Local
Support Those Who Support You
Small Businesses Make Small Towns Work!
 Consider this when you’re buying ...
As business operators, our actions shape our communities.