



DIFFERENT WORKS



RLI DESIGN PROFESSIONALS

Design Professionals Learning Event

Be Social, Not Liable

Navigating social media usage in the
workplace

DPLE 191
June 20, 2018

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An Interview With Barbara Sable & Mika Dewitz-Cryan



Course Description

UAE activist sentenced to
10 years in prison and
fined \$1 million
for online posts

This course will review the use of social media by design professionals, the risk it poses, and what design firm employees and employers can do to manage and mitigate those risks.

Learning Objectives

Participants in this session will:

1. Learn about the laws pertaining to the use of social media, how those laws need to be understood by design professionals, and the potential impact of those laws on their practice;
2. Increase their understanding of the liabilities posed by the use of social media;
3. Discover what actions employers can take with respect to such usage to mitigate the risk to design professionals and their firms; and
4. Study case law related to social media activity and how it applies to design firms.

Statistics

70%

of employers use social media to
screen candidates before hiring.

51%

used social media to research
current employees

34%

used social media findings to
reprimand or fire employees

Barista Fired for Tweeting



“My boss watches the cameras at the café, but he'd save time if he just followed my Twitter to see that I'm not working.”

- Matt Watson

CBS Executive Fired for Tweeting

“If they wouldn’t do anything when children were murdered I have no hope that Repugs will ever do the right thing. I’m actually not even sympathetic bc country music fans are often republican gun toters.”

- Hayley Geftman-Gold

TV Personality Fired for Tweeting



“Muslim brotherhood & planet of the apes had a baby=vj”

- Roseanne Barr

Screening Your Posts

Professional Limits

Post breaches code of professional conduct.

Practical Limits

Not prohibited from posting but prudent not to post.

Company Specific Limits

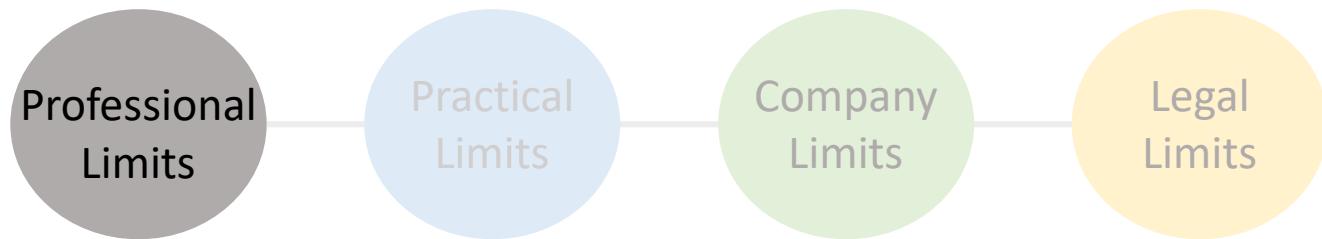
Post prohibited by company social media policy or other regulation.

Legal Limits

Post exposes you or your company to legal liability.

Breach of professional code of conduct?

Might this post violate your professional code of ethics?



Duty to Employers and Clients

Updating LinkedIn profile in violation of Canon 4.

Canon 4 – Engineers shall act in professional matters for each employer or client as faithful agents or trustees, and shall avoid conflicts of interest.

LinkedIn Example



Scott McClellan • 3rd

Responsible for technology strategy and architecture across all initiatives at PRGX.

Sacramento, California Area

InMail

...

PRGX Global Inc.

University of Iowa

- VP of Engineering responsibilities: staffing engineering organization (ramped from 6 to >120 in less than one year), engineering schedules, organizational design, engineering budget, and implementation of production offerings.
- HP "object storage" service: built from scratch, distributed system, designed to solve for cost, scale, and reliability without compromise.
 - HP "compute", "networking" and "block storage" service: an innovative and highly differentiated approach to "cloud computing" – a declarative/model-based approach where users provide a specification and the system automates deployment and management.
 - Common/shared services: user management, key management, identity management & federation, authentication (incl. multi-factor), authorization, and auditing (AAA), billing/metering, alerting/logging, analytics.
 - Website and User/Developer Experience. Future HP "cloud" website including the public content and authenticated user content. APIs and language bindings for Java, Ruby, and other open source languages. Fully functional GUI and CLI (both Linux/Unix and Windows).
 - Quality assurance, code/design inspection processes, security and penetration testing.

Excerpt, Scott McClellan LinkedIn Profile

Duty to Employers and Clients

Disparaging comments about colleagues in violation of Canon 5.

Canon 5 – Engineers shall not maliciously or falsely, directly or indirectly, injure the professional reputation, prospects, practice, or employment of another engineer or indiscriminately criticize another's work.

Blog Example

Attorney used phrases such as
“Evil, Unfair Witch” and
“seemingly mentally ill”
to describe a judge.

- Sean Conway

RLI Professional Liability Policy

SUPPLEMENTARY PAYMENTS Provision 2(a)(ii)

In the event a Disciplinary Proceeding is commenced against the Insured, during the Policy Period and first reported to the Insurer in writing during the Policy Period, **the Insurer will reimburse the Insured for reasonable attorney's fees and expenses incurred**, with the prior written approval of the Insurer, in responding to such Disciplinary Proceeding. The maximum the Insurer will pay pursuant to this provision is \$5,000 per Disciplinary Proceeding for all Insureds. The Insurer will not pay Damages, fines, taxes, or penalties pursuant to his provision.

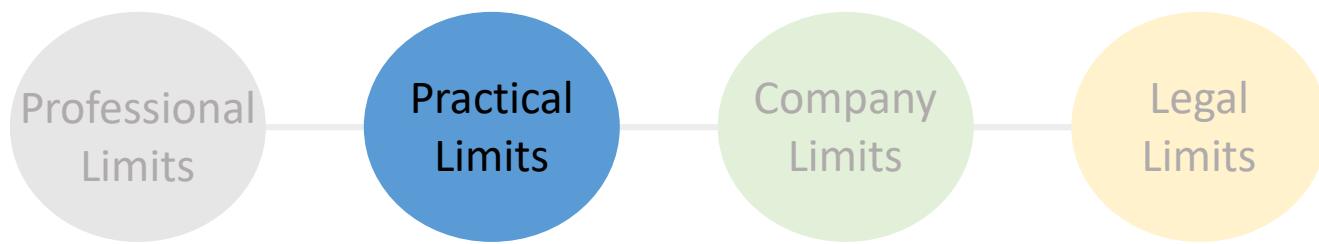
Such payments are not subject to the Deductible and are in addition to the Limits of Liability.

Practical Limits

Use common sense

Ask “if this post went viral, would I be embarrassed?”

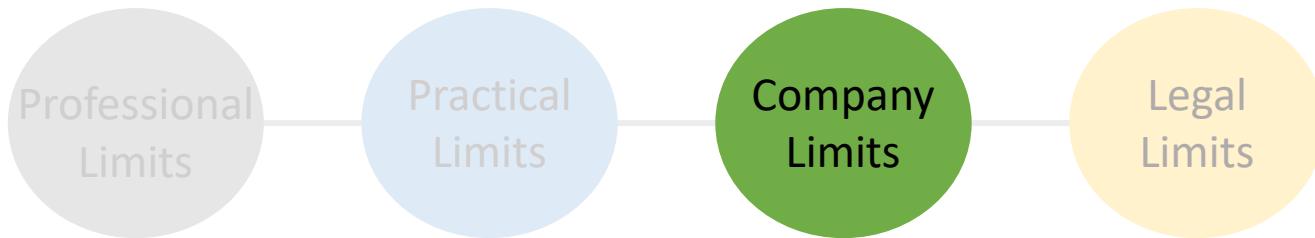
Damage to employer and co-workers of any negative press.



Company Specific Limits

Does your company have a social media policy?

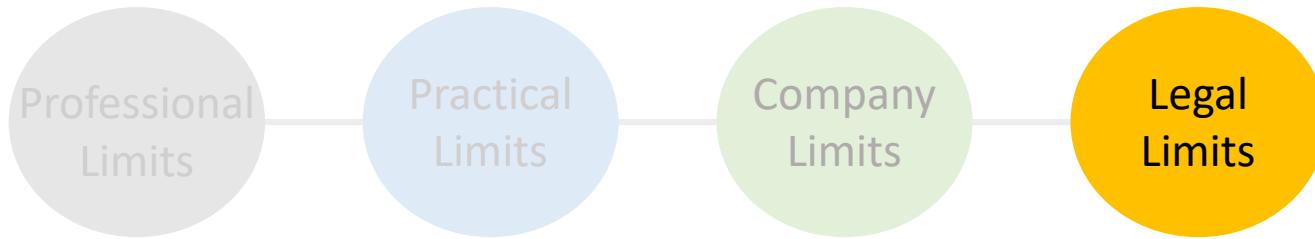
Is there a company policy or directive on the use of social media platforms in the workplace OR guidelines on what can and can't be posted?



Does your post expose
you or employer to
legal liability?

Civil Liability

Criminal Liability



Civil Liability

Defamation suit over Facebook post by a North Carolina woman results in a **\$500k settlement.**

“I didn’t get drunk and kill my kid.”

- Jacqueline Hammond

Endorsements

FTC - Federal Trade Commission

Requires disclosure of employment or other relationship when providing endorsements or testimonials of employer's/client's products or services.

1

Endorsements must reflect the truthful experience of the endorser;

2

You can't make claims that require proof you don't have; and

3

Clearly disclose any material connection between the endorser and the advertiser.

Discovery

If relevant, your posts could be sought as evidence in a lawsuit. Some parties have even been ordered to turn over their login information and password.

“[Social media posts] if relevant, are not shielded from discovery merely because plaintiff used the service’s privacy settings to restrict access, just as relevant matter from a personal diary is discoverable.”

Patterson . Turner Construction Co., 88 A.D. 3d 617, 618 (N.Y. 2011).

Case Law

See *Scott v. US Postal Service* (granting Defendant's discovery request in case where Plaintiff alleged continuing, severe personal injuries. Scope of request limited to postings that 'refer or relate to the physical injuries Plaintiff sustained...; or reflect physical capabilities that are inconsistent with the injuries that Plaintiff allegedly suffered').

Scott v. United States Postal Service (M.D. La., Dec. 27, 2016).

Can Your Employer Fire You?

Questions to consider:

1. Posting on company time using company resources/equipment?
2. Content of post - protected or unprotected?

Unprotected v. Protected Speech

Unprotected Speech

Generally, employers can fire employees for any reason so long as it's not for an illegal reason.

Protected Speech

Exception to the general rule. Employer cannot fire employees for engaging in protected speech.

Unprotected Speech

Confidential Information

Disclosure of trade secrets or confidential business information is NOT protected and is actionable.

Discrimination or Harassment

Activities that harass, threaten, bully, or constitute hate speech is NOT protected and is actionable.

Compromise Business Interests

Comments that disparage customers or otherwise compromise legitimate business interests is NOT protected and is actionable.

Case Law

In *Palleschi v. Cassano*, the Court upheld an employer's decision to discipline a lieutenant for posting a photo on Facebook detailing a 911 call for a medical emergency he received while on duty. The photo of the terminal display included the caller's address and number.

In Matter of Palleschi v. Cassano, Case No. 105486/11(NY).

Hypothetical

Employee's post violates the terms of a confidentiality or non-disclosure agreement with a client.

Discrimination or Harassment

Employers are required
to maintain respectful
workplaces

In *Espinoza v. County of Orange*, the Court found the employer liable under the California Fair Employment and Housing Act for failing to prevent harassment.

Espinoza v. County of Orange, 2012 WL 420149 (Cal. App. Ct. February 9, 2012).

Case Law

In *City of San Diego v. Roe*, the Court held a police officer who uploaded and sold online videos of himself engaging in inappropriate behavior in his police uniform was not engaging in protected speech.

“The use of the uniform, the law enforcement reference in the Web site, the listing of the speaker as ‘in the field of law enforcement,’... brought the mission of the employer and the professionalism of its officers into serious disrepute.”

City of San Diego v. John Roe, 543 U.S. 77 (2004).

Protected Speech

1st Amendment

Protection granted by the U.S. Constitution. Only applies to restrict action by public entities.

Protected Concerted Activity

Protection to engage in protected concerted activity granted by National Labor Relations Act.

Off Duty Conduct Laws

State laws that protect employee from adverse employment action for certain lawful, off-duty conduct.

Free Speech

Free speech is a constitutional right. There is no First Amendment protection against action by private entities.

Protected Concerted Activity

NLRA - National Labor Relations Act

“right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other **concerted activities for the purpose of collective bargaining or other mutual aid or protection.**”

29 U.S.C. sec. 157.

Protected Concerted Activity

Prohibited Labor Practice

“to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.”

29 U.S.C. sec. 158(a)(1).

“Concerted Activity”

Concerted Activity

Conduct engaged in with the **objective** of initiating, inducing, preparing for, or has some relation to group action in the interest of the employees.

El Gran Combo de Puerto Rico v. NLRB, 853 F.2d 996, 1004 (1st Cir. 1988).

NOT Concerted Activity

Complaints made solely on behalf of an individual employee.



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Social media

Even if you are not represented by a union, federal law gives you the right to band together with coworkers to improve your lives at work - including joining together in cyberspace, such as on Facebook.

Using social media can be a form of "protected concerted" activity. You have the right to address work-related issues and share information about pay, benefits, and working conditions with coworkers on Facebook, YouTube, and other social media. But just individually griping about some aspect of work is not "concerted activity": what you say must have some relation to group action, or seek to initiate, induce, or prepare for group action, or bring a group complaint to the attention of management.

News

[Supreme Court Issues Decision in NLRB v. Murphy Oil USA](#)

[NLRB Considering Rulemaking to Address Joint-Employer Standard](#)

[John F. Ring Sworn in as NLRB Chairman](#)

[Board Extends Time for Filing Briefs in Velox Express](#)

In the Interest of Employees

Case Law

In *Hispanics United of Buffalo, Inc.*, the NLRB affirmed the Administrative Law Judge's finding that an employees' Facebook activity in response to a coworker's criticisms of their job qualified as "protected concerted activity."

"Lydia Cruz, a coworker feels that we don't help our clients enough at [Place of Work]. I about had it! My fellow coworkers how do you feel?"

Hispanics United of Buffalo, Inc. and Carlos Ortiz, 359 NLRB 368, 370 (2012).

In the Interest of Employees

Case Law

"[L]egitimate managerial concerns to prevent harassment do not justify policies that discourage the free exercise of Section 7 rights by subjecting employees to . . . discipline on the basis of the subjective reactions of others to their protected activity."

Hispanics United of Buffalo, Inc. and Carlos Ortiz, 359 NLRB 368, 370 (2012).

NOT In the Interest of Employees

Case Law

In *JT's Porch Saloon & Eatery Ltd.*, the NLRB found employee's Facebook post was NOT protected where he responded to a relative by (1) complaining that he hadn't had a raise in five years, (2) complaining that he was doing waitresses' work without tips, (3) ridiculing the employer's customers and (4) stating that he hoped they choked on glass as they drove home drunk.

JT's Porch, 13-CA-046689 (2011).

NOT In the Interest of Employees

Case Law

“Although the [Bartender]’s posting addressed his terms and conditions of employment, he did not discuss his Facebook posting with any of his fellow employees either before or after he wrote it, and none of his coworkers responded to the posting. There had been no employee meetings or any attempt to initiate group action with regard to the tipping policy or the awarding of raises. There also was no effort to take the bartenders’ complaints about these matters to management...”

JT's Portch, 13-CA-046689 (2011).

Off Duty Conduct Laws

Unlawful Prohibition of Legal Activities as a Condition of Employment

(1) It shall be a discriminatory or unfair employment practice for an employer to terminate the employment of any employee due to that employee's engaging in any lawful activity off the premises of the employer during nonworking hours unless such a restriction:

- (a) Relates to a bona fide occupational requirement or is reasonably and rationally related to the employment activities and responsibilities of a particular employee or a particular group of employees, rather than to all employees of the employer; or
- (b) Is necessary to avoid a conflict of interest with any responsibilities to the employer or the appearance of such a conflict of interest.

CO Rev Stat § 24-34-402.5 (2016).

Conduct Must Be Lawful

Case Law

In *Coats v. Dish Network, LLC* the Colorado Supreme Court upheld the termination of an employee for his off duty use of medical marijuana, even though such use was in accordance with Colorado State Law.

“[A]n activity, such as medical marijuana use that is **unlawful under federal law is not a ‘lawful’ activity** under section 24-34-402.5.”

Coats v. Dish Network, LLC, 350 P. 3d 849 (Col. Sup. Ct 2015).

Anti Snooping Laws

Some States prohibit employers from requesting or requiring access to your social media accounts.
Certain exceptions apply.

Anti-Snooping Laws

Prohibitions of employer – requiring access to personal electronic communication devices

An employer may not suggest, request, or require an employee or applicant to

- (i) disclose account login information;
- (ii) provide employer access;
- (iii) add employer to contacts lists; or
- (iv) change privacy settings.

Retaliation for refusal is prohibited.

Exceptions for:

- (i) non-personal account login information; or
- (ii) to investigate claims of (a) non-compliance with applicable law or regulatory requirements or (b) theft of employer's proprietary data.

CO Rev Stat § 8-2-127 (2013).

Social Media Policy

Why have a social media policy? What's in one?
Curating a social media policy.

Social Media Policy

“It is **absolutely vital** whether you’re a sole entrepreneur or a Fortune 500 company [to have a social media policy]. Every single business person should have a **social media policy**.”

- Mari Smith

Business Uses for Social Media

Advertising and marketing

Communicating with clients

Responding to crisis

Responding Quickly



Follow

People of all races, religions and nationalities work at Sanofi every day to improve the lives of people around the world. While all pharmaceutical treatments have side effects, racism is not a known side effect of any Sanofi medication.

9:57 AM - 30 May 2018

65,547 Retweets 174,353 Likes



5.8K

66K

174K



Goal – Provide Guidance

“Give every employee a sense of what they can and can’t share, whether they’re operating on behalf of the business or they’re in their own personal profiles.”

- Mari Smith

Crafting a Social Media Policy

Consider addressing...

- ✓ Guidelines for using social media networks
- ✓ Rules for using company name and logo
- ✓ Consequences for violations
- ✓ Notify employees no reasonable expectations of privacy at work

RLI Social Media Policy



RLI Corp.

Policy Owner: Lisa Gates | Updated: 2/23/2012 | Effective date: 2/23/12

RLI SOCIAL MEDIA POLICY

POLICY OVERVIEW

RLI recognizes the value of social media as a means of communicating, recruiting, connecting, and marketing. It can be used to effectively facilitate communication through social interaction, dialogue, and by publishing information. Social media includes communication tools such as blogs, podcasts, RSS feeds, and message boards; as well as sites including, but not limited to, LinkedIn, Twitter, Facebook, YouTube, WordPress, and MySpace.

Social media sites and technologies may be used by RLI employees for business or personal purposes subject to the restrictions set forth in this policy to ensure compliance with legal and regulatory restrictions and privacy and confidentiality agreements.

PURPOSE

The purpose of this policy is to outline rules for business and personal use of social media by RLI employees, in addition to applicable provisions in the [RLI E-mail and Electronic Communication Policy](#), [Information Protection Policy](#), [Code of Conduct](#) and [Insider Trading Policy](#).

This policy is intended to protect RLI, its customers, and its employees' interests rather than to restrict the flow of useful and appropriate information.

Best Buy Social Media Policy

Best Buy® Social Media Policy *Be smart. Be respectful. Be human.*

Guidelines for functioning in an electronic world are the same as the values, ethics and confidentiality policies employees are expected to live every day, whether you're Tweeting, talking with customers or chatting over the neighbor's fence. Remember, your responsibility to Best Buy doesn't end when you are off the clock. For that reason, this policy applies to both company sponsored social media and personal use as it relates to Best Buy.

What You Should Do:

Disclose your Affiliation: If you talk about work related matters that are within your area of job responsibility you must disclose your affiliation with Best Buy.

State That It's YOUR Opinion: When commenting on the business. Unless authorized to speak on behalf of Best Buy, you must state that the views expressed are your own. Hourly employees should not speak on behalf of Best Buy when they are off the clock.

Protect Yourself: Be careful about what personal information you share online.

Act responsibly and ethically: When participating in online communities, do not misrepresent yourself. If you are not a vice president, don't say you are.

Honor Our Differences: Live the values. Best Buy will not tolerate discrimination (including age, sex, race, color, creed, religion, ethnicity, sexual orientation, gender identity, national origin, citizenship, disability, or marital status or any other legally recognized protected basis under federal, state, or local laws, regulations or ordinances).

Offers and Contests: Follow the normal legal review process. If you are in the store, offers must be approved through the retail marketing toolkit.

What You Should Never Disclose:

The Numbers: Non-public financial or operational information. This includes strategies, forecasts and most anything with a dollar-figure attached to it. If it's not already public information, it's not your job to make it so.

Walmart Social Media Policy

While you're with us, we hope you'll take a moment to read the following guidelines we ask you to follow when contributing to our Facebook or Instagram page:

- **Don't do anything that breaks the law.**
- **Be polite and courteous**, even if you disagree. Excessive name calling, profanity, fighting words, discriminatory epithets, sexual harassment, bullying, gruesome language or the like, will not be tolerated.
- **Stay on topic.** Keep the conversation relevant to the community and contribute to the dialogue. We reserve the right to remove content that is off-topic, out of context, spam, promotional or links to third party sites.
- **Keep it real.** All posts should come from a real person and a real Facebook or Instagram profile. Postings from fake or anonymous profiles will be deleted when discovered.
- **We are happy to help our customers and associates** through Facebook or Instagram, and look forward to hearing from you.
- **We reserve the right to remove content** posted to Facebook or Instagram that violates these guidelines.

Walmart Social Media Policy

If you are a Walmart associate, please follow these additional guidelines:

- **Know the rules.** Before engaging on Facebook or Instagram, or on any other social media property, make sure you read and understand Walmart's Social Media Policy and Walmart Information Policy. In any and all interactions, make sure that you don't share confidential or private information about the Company's business operations, products, services, or customers; respect financial disclosure laws; and do not say you speak for the Company without express written authorization from the Company to do so.
- **Remember that we have a dedicated team** tasked with responding to customer inquiries or criticism. Our official Walmart social team is responsible for engaging customers through our page. To avoid confusion, we ask that you not attempt to respond to customer inquiries or comments directed specifically to the Company or asking for an official Company response on this site.
- **Consider using company established channels** for job-specific issues. While we encourage associates to join our Facebook and Instagram communities and participate in conversations with our customers and other users, we encourage you to direct your complaints or concerns about your job or working environment to your store management team using the established Open Door Process or WalmartOne.com.

For Walmart managers: If you are a manager, please make sure you are familiar with our Social Media Management Guidelines, available on the Walmart Wire.

Also, think about...

Be aware of the risks associated with using social media in the hiring process, and to track current employees.

Remember

“Privacy on social media networks is an illusion.”

- Suzana Florez

Thank you for your time!

QUESTIONS?

This concludes The American Institute of Architects
Continuing Education Systems Program



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