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Social Media as a Tool for Tennessee Municipalities

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SOCIAL MEDIA AS A TOOL FOR TENNESSEE MUNICIPALITIES

Bonnie Jones, Human Resource Consultant
Sample Social Media Policy by Josh Jones, Municipal Legal Consultant

December 2010

THE UNIVERSITY of TENNESSEE 
MUNICIPAL TECHNICAL ADVISORY SERVICE

In cooperation with the Tennessee Municipal League



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By sharing information, responding to client requests, and anticipating the ever-changing municipal government environment, MTAS promotes better local government and helps cities develop and sustain effective management and leadership.

MTAS offers assistance in areas such as accounting and finance, administration and personnel, fire, public works,

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This publication will provide your city with information relative to social media for purposes of communicating with employees, interacting with your community, and using social media as a hiring tool. It will also discuss the liabilities of allowing social media to influence your personnel and hiring decisions.

While lacking an accepted concrete definition, social media is a way to use the internet and applications to communicate with people, groups, and other entities using an interactive process. These primarily web-based communication systems allow entities to receive and share information quickly and efficiently for various purposes. Social media uses Web 2.0 technology which supports a two way exchange of communication through platforms such as blogs, RSS feeds, and uploading data.

Today, social media is a conglomeration of Web sites and applications such as Facebook, MySpace, Twitter, Digg, Flixta, Xanga, LinkedIn, Classmates, blogs and RSS feeds. Tomorrow, the many faces of social media may change, but the concept of interactive web communication is here to stay.

WHAT DO PEOPLE USE SOCIAL MEDIA FOR?

Social media is a way for people to share information. An account can generally represent an individual, a company, municipality, or a group. Three primary uses for social media are:

- Networking
- Socializing
- Marketing

SOCIAL MEDIA STATISTICS

Social media has grown quickly in the last few years. In the USA, Facebook reaches 57 percent of the U.S. population.ⁱ Last year, the fastest segment of growth was females over 55, this year it has been reported to be teenagers (those 18 and under).ⁱⁱ To see a snapshot of total user statistics refer to Table A.

Table A. SOCIAL NETWORKING STATS

FACEBOOK

- 540 million users
- Reaches 57% of U.S. population
- Reaches 35% worldwide
- 25% of users are 24–34
- 24% of users are 45–54

TWITTER

- 165 million users
- Most users are 25–34

MYSFACE

- 67 million users
- Popular as a dating network
- 64% of users are female

LINKEDIN

- 41 million members
- Mainly professional networking
- 46% of users are male

3rd quarter 2010 from
paulkiser.wordpress.com



POLITICS AND SOCIAL NETWORKING

Interestingly, the year 2008 was the first time Americans experienced social media used as a primary campaign marketing strategy during the presidential campaign. This was an unprecedented public relations move that put candidates in touch with millions of people 24/7. Social media is now being used in many local campaigns. It is important for your city to consider the implications of this and to keep the employer site and “political platform” separate. Employees should be aware that any form of campaigning while on the job is likely a violation of public policy.

THE ECONOMICS OF SOCIAL MEDIA

Social media is a relatively inexpensive and effective way to get information out quickly. Traditional means of communication require someone to read a paper or go to a Web site, whereas social networking allows for information to be fed to a mass number of people all in the click of a few buttons. Take, for example, the communities of Lake Arrowhead, Calif. Facing a severe budget crisis and the loss of their printing budget, the Chamber of Commerce struggled to find finance print advertising in 2009. Their part-time marketing director launched head first into social media as a means to market the Lake Arrowhead community. A year later, the community replaced all print media with online media and closed out the year with an increase in lodge reservations. Social media has helped this community compete in a dynamic economy despite losing its print budget. The chamber uses a Facebook page, Twitter account, and a blog.

<http://www.justasmalltowngirl.us/blog/>

USING SOCIAL MEDIA TO COMMUNICATE WITH EMPLOYEES

With the popularity of social media, it is no surprise that municipalities and other local government entities are using social networking to connect with their employees. Social media is becoming an important strategic tool for human resources and management in keeping employees engaged. Critical to employee morale is ensuring employees stay informed and interactively participate in the decision-making process. Social networking is an effective way for cities and employers to do this. Some cities prefer social media such tools such as blogs and podcasts, while other cities lean toward Twitter or Facebook. The choice of which social media forum to use will be community specific. Your information technology and legal departments should be consulted to ensure technical capability and policy compliance.

Any information that can be distributed to employees via a paper memo can be communicated via social media. However, human resources

Table B. WHY DO CITIES USE SOCIAL NETWORKING?

- Benefit Package Information
- Citizen Engagement
- Construction
- Emergency Management
- Employee Communication
- Employee Recognition
- Human Resources
- Meeting Minutes
- Networking
- Planning
- Project Management
- Public Notice Requirements
- Public Relations
- Recruitment Safety
- Surveys
- Training and Development
- Tourism and Marketing



information is often the most relevant and important information sought by employees. Along these lines, cities should consider communicating information on benefit and wellness programs which include the dollar value of benefits offered. With this, cities can regularly poll employees on additional benefits they would like to see offered and remind employees about open enrollment and upcoming health fairs or events.

However, before your city launches full speed into social networking, it is important for a city to have policies and procedures in place and to communicate them to employees. Furthermore, employees must be provided information and training on the use of social media. This is no different than when companies first started using e-mail or the internet. MTAS has developed a sample Social Media Policy for your city to use as a template; it is located in Appendix A.

Your city may also want to consider including employees in the policy creation and education process. Sometimes the most outspoken employees can become the best resource and strongest advocate for change. Additionally, consider the policies on social media to be a work in progress. Your city will need to revisit these policies regularly and determine what changes need to be made to keep current on social media use. Social media and interactive web communication is evolving and the city will learn as it goes.

When the city does open up a social media channel, it should be prepared to listen to the feedback of employees. A city can do this in a variety of ways such as instant polls, online focus groups, and by responding to comments and messages quickly and responsibly.

Social media can be an excellent channel for employee rewards and recognition. Cities can feature individual employees or departments and

allow peers to nominate each other for excellent work. Cities can even have department safety competitions and introduce new city initiatives. However the city chooses to use social media to communicate with employees the city should make content interesting, be consistent, and listen to employee feedback.

There may be some challenges to communicating with employees through social media. Open criticism by employees can be uncomfortable for employers and, cities need to make employees aware of how their opinions and comments on social networking sites may adversely affect the employment relationship. This should be done through education and the city's social media policy. Federal Trade Commission court rulings have made it clear that the employer can be held responsible for statements made by their employees about their products or services.

Cities should set clear policies that include how employees reference their employer online, especially if these references are inappropriate or disparaging. This can be a difficult balance to strike and freedom of speech must be considered when developing such policies.

USING SOCIAL MEDIA TO INTERACT WITH THE COMMUNITY

As you can see from the contents of Appendix B, governmental agencies across the nation are using social media in a variety of ways to communicate with their citizens. Appendix B will provide you with the most common topics that local governments cover when communicating with citizens. Topics from road projects to ribbon cutting ceremonies and citizen events can be quickly communicated to a wide audience without the citizens having to seek out the information. If a city has a Facebook page, a user simply has to click on "like" or "subscribe to" on the city page and the newsfeeds will automatically be sent to the user.



Perhaps the most effective use of social media as a means to communicate with citizens is in the area of roads, maintenance, construction, and city projects. The city of Boston, Mass., created an award-winning, interactive smart phone application for citizens to report graffiti, potholes, broken streetlights, road problems, and other city issues to the city of Boston. The application is called Boston Citizens Connect and allows users to report problems anytime and without the expense of a municipal employee. Users can simply use their cell phones to snap a photo of any condition and send it to the city all in the span of a few seconds. When the picture is sent, the location's coordinates are automatically embedded in the picture and the user can expound with typewritten details if necessary. After a complaint is made a red dot shows up in the application on a map that can be seen with a Smartphone. When the problem is fixed the dot changes to green and the citizen knows the problem has been resolved. While the technology is complex, for the user it only requires the touch of just a few buttons on a Smartphone.

Like private companies, cities may also consider the use of social networking with the community to incorporate their brand or image to their constituents. Often people think of branding in a sales context, however, cities can utilize social media to foster and promote their public service brands. Examples include: wellness programs, green initiatives, health & benefits, leadership programs, and community services. Additionally, a city could use social media as a means to maintain a strong public service profile and relay information building on its mission, vision, values, and goals. A city should think about branding these programs and using visual logos to assist in identification of the public service program.

SOCIAL MEDIA'S ROLE IN MUNICIPAL RECRUITMENT

Gone are the days of long job advertisements in the Sunday paper. Organizations can now post job listings to Web sites including their own social networking sites where viewers can "share" the link with their contacts. Some recruiters use their personal social networking page as a business tool and job seekers can "friend" them which allows instant access to their profile and job openings. Some sites allow recruiters and employers to search and view profiles of people who become a "fan" of or "like" their company page. When searching these sites recruiters often use a keyword or group search to find potential applicants working in the field associated with the job posting. An advantage to social networking for recruitment is that passive job seekers can stay up to date on job openings without having to actively search the web or company Web sites.

Social media sites like LinkedIn provide instant access to resumes and recommendations and allow recruiters to conduct detailed searches all in the click of a button. Each profile on LinkedIn reads like a resume. You can send private or public messages and post status updates for all your friends to see. You can set your profile privacy settings to match your own preferences. LinkedIn also provides the opportunity for members to post video resumes and visual presentations that they own. Some companies are embracing social media and encouraging their employees to use it to network with each other and share information. Social networking in large companies can be a strong recruitment and talent management tool.

As the popularity and access to social networking increase employers must be aware of potential issues involving social media and employment law. A 2009 CareerBuilder.com survey showed that 35 percent of employers using social networking utilized information found on social networking



sites in deciding not to hire someone.ⁱⁱⁱ LinkedIn is particularly popular with recruiters, and companies often contact potential candidates directly on their site.

A larger Microsoft survey shows that approximately half of employers do research on candidates online before hiring and 70 percent of U.S. employers responding to the survey have decided not to hire someone based on their online activity.^{iv} While it is tempting to search for information on potential hires, there are some significant legal exposures for doing so. The most common reasons for rejecting applicants were as follows: concerns about the applicants lifestyle, inappropriate comments, photos and videos, inappropriate comments written by friends/relatives, open criticism of employer(s), inappropriate comments written by colleagues or work peers, group memberships, false information, poor grammar/communication skills, and financial stability of the applicant.^v

Legally, there is nothing wrong with rejecting an applicant whose personal characteristics that may result in poor performance or inability to perform the essential functions of the job. However, what is critical is that your city bases any applicant rejection on job-related competencies and characteristics that are core to the essential functions of the job. Religion, pregnancy status, disability, and country of origin (or any other protected status⁶) are simply indefensible as job relevant. Your city must always be able to demonstrate that decisions were based on job related criteria and not irrelevant information protected by local, state, and federal laws.

While employers use social networking as a means to investigate people, candidates also use social networking as a way to find out about a company. According to an August 2010 study by Harris Interactive on behalf of Career Builder.com, 35 percent of respondents used social media to

look for new positions and 26 percent look to social media to find out facts about a company.^{vi}

INACCURACIES AND CONTEXT

Employers should exercise caution when looking for information about a person online. Some of what is posted online is not controlled by the applicant or the employee. Additionally, there is always the possibility you are not looking at the correct person's profile or that someone is impersonating an individual. A joke or comment posted on someone's profile by a "friend" in bad taste may not accurately reflect the character of your candidate or employee. A remark taken out of context may appear much more severe than its intent. Most users protect themselves by setting their privacy settings so that their profile is not open to the public. While privacy settings are meant to protect a user's personal information, the settings do not protect applicants and employees against fraud, impersonation, harassment, photo tagging, and photo editing.

FAIR CREDIT REPORTING ACT

An applicant may have legal causes of action if he or she has been turned down for a job as a result of online information. Under the FCRA, an invasion of privacy suit could be established and some experts suggest social networking sites themselves may be vulnerable to suits. Some states have legislation that prohibits employers from performing credit checks as a part of the employment process.

Employers should provide a written notice that explains your city may obtain a consumer report for employment purposes. Employers are also required by the FCRA to obtain the applicant's signature before performing a background check and releasing the information. If an adverse employment decision is made based on information discovered through a background check, the applicant should be notified as described in FCRA regulations.



DISCRIMINATION — BASED ON PROTECTED CLASSES

Most social networking sites show an employer a person's gender, race, age, sexual orientation, neighborhood, family members, religious views, family status, pregnancy status, and political views. In some cases a person's profile may yield direct or indirect information about medical information, genetic issues, and health status. If an employer has access to this information, how can they guarantee they won't use any of this information to make hiring or employment decisions? Once the information is viewed, there is no way to go back and undo what the employer has learned. This is perhaps, the largest employment risk associated with reviewing online profiles on candidates.

Potential liability arises when an employer uses the information found via social media affect hiring and or employment decisions. For example, an employer is getting ready to make Sarah an offer, and suddenly finds Sarah's online profile and clearly sees she is pregnant. The employer may change the hiring decision based on the online information, which is illegal. In addition, the employer may have been able to determine Sarah's relative age, marital status, race and even religious and political affiliation. Employers making employment decisions based on information related to protected classes may be a violation of state, local, and federal laws.

Conversely, if the employer makes a poor hiring decision, the city could be accused of being negligent for failing to properly conduct background and pre-employment screening. With court dockets and other public information online, information on potential candidates is easier to obtain. For this reason, every city should have a policy on social networking and its use in the hiring process. You should consider all aspects of the hiring process as well as its use in background checks and employee discipline and harassment.

Discrimination laws prohibit employers from seeking out information that would disclose protected status information. If you wouldn't ask a candidate if she/he had children in an interview, then it isn't relevant to your online search either. Those with hiring or firing authority should be careful in accessing any profile that could reveal age, gender, relationship status, national origin, disability status, pregnancy status, health status etc.

For human resource managers it is appealing and empowering to have a wealth of information on candidates at the stroke of a few keys. Viewing social media profiles can be a quick way to identify poor communication and grammar skills, offensive photos and remarks, and an exaggerated resume. However, a city must keep in mind that viewing applicant social media profiles may put them at risk for violating: GINA, Title VII of the Civil Rights Act, American's with Disabilities Act, the Pregnancy Discrimination Act, and the Age Discrimination in Employment Act. In addition, a city can open itself up to disparate impact & disparate treatment claims.

GENERAL EMPLOYMENT DISCRIMINATION

In 1971 the Supreme Court formally recognized two primary types of employment discrimination, disparate treatment and disparate impact. Cities using information obtained on social media sites to make hiring decisions may be vulnerable to disparate impact and disparate treatment claims.

DISPARATE IMPACT

Employers who solely use social networking as a means to hire or recruit applicants may be vulnerable to a disparate impact claim. Disparate impact can occur when a city uses social media as a sole means to evaluate candidates or a when a city only considers applicants who use social media. It can also become an issue when a city shows preference for those applicants who have



a more favorable online status as opposed to those who have a limited presence on social media forums. Perhaps the most concrete risk of disparate impact is that the population on social media networks is not representative of the real applicant pool that exists. This means you may be intentionally excluding certain classes of applicants such as males, minorities, or older Americans. There is a marked difference in social media use for certain populations. There is also a significant difference in the types of users that access different social media sites. LinkedIn reports a far smaller percentage of African American profiles than white Americans. Statistics show only 5 percent of LinkedIn's members are African American (vs. 12.8 percent of the total population) and only 2 percent are Hispanic (vs. 15.4 percent of the total population).^{vii} By contrast, Mashable.com keeps up with social media use relative to the U.S. and world population. In 2010, they posted a study on demographics that showed there are proportionately more Asians, blacks, and Latinos on Facebook than in the general U.S. population. For whites, it is the opposite; there are a disproportionately lower number of whites on Facebook as compared to the U.S. population.^{viii} Again, this shows that different segments of our population prefer different social networking tools or perhaps none at all. These statistics also show that is important to use recruitment processes that reach all groups of your citizens, not just those who use certain social media tools. While social media is an inexpensive, effective, and powerful recruitment tool, it should not be the city's sole source of advertising or recruiting.

DISPARATE TREATMENT

Disparate treatment can occur when a city uses social media inconsistently and evaluates some applicants through social media and others through another process. This often happens when a city lacks a recruitment plan and neglects other forms of job advertising. Employers should not use the information found on social media sites in an inconsistent way or in a different way for applicants applying for the same job. In other words, if you are going to use social media to make judgments about one candidate, you should absolutely be looking at the same information for all applicants and documenting this process.

FEDERAL EMPLOYMENT LAWS

As employers, applicants, and employees increasingly use social media for employment purposes it should be noted that cities must consider all applicable local, state, and federal laws in using these media forms. Remember, employment laws are currently the same for an employer who uses social media for any hiring procedure as an employer who does not use social media in the hiring process. Please refer to Tables D & E for

Table C. DISPARATE TREATMENT AND IMPACT

Disparate treatment involves intentional treatment of members of a protected class differently than those in a similar situation. An example of disparate treatment would be the evaluation of some applicants through social media and others through another process.

Disparate impact involves an employer with a practice that has a much bigger impact on one group than on another. An example of disparate impact would be an employer who relies heavily or solely on social media for recruitment which will exclude certain segments of the applicant pool (i.e., older applicants) who may not use social media the same way another group of applicants do.



a list of federal laws that must be considered when making hiring and employment decisions.

Here are applicable employment laws:

- USERRA
- State Military Laws
- TITLE VII
- ADA
- ADEA
- PDA
- GINA

ENDORSEMENTS, ADVERTISING, AND TESTIMONIALS

Another potential legal issue for employers is the area of endorsements and testimonials in advertising. In light of some FTC rulings, it has been made clear that an employer can be held responsible for statements made by employees about their products or services. The employer may be held liable for damage a consumer suffers as result of relying on information posted by an employee or company representative. FTC guidelines encourage employers to have solid social networking policies in place and strongly suggest that employers provide training to employees on this policy. Furthermore, these policies should make clear to employees that when posting online they must take caution never to do so in an official capacity or imply they are speaking on behalf of the city.

INVASION OF PRIVACY

You should be familiar with local, state, and federal rules concerning invasion of privacy. Under no circumstances should a city ask for log on identification or passwords, or use someone else's passwords to access employees' or applicants' social networking accounts. A popular restaurant chain found itself in court after asking employees for this information on a private "group" designed for the purpose of venting about work. The employees won the case because the employer gained unauthorized access to the social network by forcing employees to provide their user credentials.

In another situation, a city in Montana got into hot water after asking applicants to provide their user names and passwords as part of the hiring process and background check. The news of this went viral, and city officials promptly retracted their stance. Surprisingly, this is not the only municipality to make this mistake.

Table D. FEDERAL EMPLOYMENT LAWS

Title VII of the Civil Rights Act prohibits discrimination based on race, color, sex, national origin, or religion. This federal law applies to local government with at least 15 employees. Additional protections have been extended to include pregnancy discrimination and sexual harassment.

Americans with Disabilities Act of 1990 (ADA) prohibits employment discrimination based on disability. Also requires employers to make reasonable accommodations to persons with disabilities.

Age Discrimination in Employment Act of 1967 (ADEA) prohibits employment discrimination based on age forty and up. This applies to applicants as well as employees.

Pregnancy Discrimination Act of 1978 prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions.



Table E. GINA

EEOC RELEASES FINAL GINA REGULATIONS

Genetic Information Nondiscrimination Act (GINA) This legislation prohibits employers from using individuals' genetic information when making hiring, firing, job placement, or promotion decisions. This legislation also prohibits improper use of genetic information for purposes of health insurance and employment decisions. GINA broadly defined genetic information to include family members of employees which initially left employers concerned about the implications of using social media to interact with employees.

On November 9, 2010 the EEOC released final Regulations which address treatment of acquiring genetic information via social media. For example, under the Inadvertent Acquisition Exception, an employer would likely not be in violation of GINA if they came across an employee's genetic information that was available on a social media site for which they were given permission to access by the creator of the profile (i.e., the supervisor is friends with the employee on Facebook). However, in situations that require social media users restricted access or access by invitation only these sources of information will not be covered under the "Commercially & Publicly Available Exception." This means, an employer cannot acquire genetic information when that information is not intended to be available to them (i.e., through privacy settings or special group access).

Most notably, if an employer obtains genetic information through a social media site or publicly available media sources, it is not protected by the commercial exemption if the employer sought out the information with the intent of obtaining genetic information or if the employer is "likely" to acquire genetic information by accessing those media sources.

The bottom line, be careful about any employment practices that could allow your city to view or acquire any genetic information on applicants, employees and their family members. Never make a hiring or employment decision based on genetic health information, this is illegal. The final regulations can be found at <http://www.eeoc.gov/laws/types/genetic.cfm>.

The courts have stated that employers should not be attempting to gain unauthorized access to private social networking profiles/groups for the purpose of spying on employees. Employers should be reminded that there is a risk in attempting to access employee/applicant content that is unauthorized or intended to be private.

OFF-DUTY BEHAVIOR

A legal grey area exists with respect to public employers regulating the behavior of off-duty employees. That is, an employee's behavior when he or she is not at work which may affect the employment relationship. In some instances, an employee's social media presence off-duty may be problematic and even dangerous for a city. An example of this is a police officer who posts inappropriate photos of themselves online while identifying themselves as a public safety officer, or an undercover officer posting information that could compromise integrity of police work. These issues have prompted many police and fire departments to adopt a department-specific social networking policy.



A police department may want to consider the following in creating their social media policy:

- Authorized of uniforms, insignia, emblems, city logos and anything related to city business
- Anonymous “blogging” or information sharing regarding city business
- Discussing work issues or personal thoughts about police strategies online
- Protection of sensitive information
- Security of undercover work (present and future) such as an employee’s future capacity to move into an undercover position

A city should have clear policies in place to address off-duty online activity of employees. Off-duty behavior could be anything obtained through a social media channel or web based application. In public service, the off-duty behavior standard may be set high, particularly for public safety employees.

Before your city considers disciplining an employee for online behavior, consider the following. Some states like Illinois, for example, have state laws that prohibit the firing of an employee who consumes alcohol or cigarettes while not at work. Tennessee has no such law, but it is important to stay abreast of cases that affect social media policies and use of social networking as an employment tool.

DISCIPLINING AN EMPLOYEE FOR ONLINE ACTIVITY

While each case is different and you should rely on the advice of your legal counsel, here are some questions that you should ask before disciplining or terminating an employee for their social media activity.

- Do we have a policy on social media?
- Did this employee’s conduct relate to his/her job?
- What do we have that constitutes as “proof” of employee misconduct?
- Did the employee admit to the behavior?
- What local, state, or federal laws did the employee violate?

- How have we treated other employees in similar situations?

WORKERS’ COMPENSATION

- How will this action affect the current workers’ compensation claim?
- If the employee is on workers’ compensation, did the claims administrator deny claims based on this information?
- If the employee is on workers’ compensation, is the employee being formally charged with fraud?

Before disciplining an employee for off-duty behavior, review your personnel policies as well as your social media policy. While the conduct may be viewed as unbecoming, there may be no legal basis for discipline.

HARASSMENT

Social networking provides yet another vehicle for workplace harassment and bullying. Workplace harassment can take place via the internet just as it can in person or in writing. If a city is using social networking to promote its own interests, the social media venues should be closely monitored for harassment and potential acts of violence.

Upon discovering an employee using social media to harass, the city employer has a legal duty to address the situation within a reasonable period of time. Employers should treat these incidents just as seriously as an in person harassment situation.

RECORDKEEPING

If a city is accessing a social media profile as a means to make hiring decisions information retained is subject to the city’s record-keeping policies and practices and may be subject to the Tennessee Open Records Act. If a city prints a profile, it is likely to contain information that should not be considered in the hiring process. As it stands right now, the EEOC guidance is for employers to continue to structure recruitment and selection processes to be non discriminatory



and to consistently focus on the job qualifications of all job seekers, regardless of technology or of the information available by virtue of that technology. However, if you are using social media profiles as a means to screen applicants, that information should be included in your recordkeeping.

FREQUENTLY ASKED QUESTIONS

Q: Shouldn't candidates know that their online information could be viewed by a potential employer? Why should I have to provide a written release of this at time of application?

A: This is a question that is asked frequently. Not all social networking users prescribe to the same rules and precautions by making sure their information stays private. It is recommended that you provide a release along with the application that tells the applicant that you will be conducting a background check which may include social networking and online searches. This also provides the applicant with the requisite time to make changes to their privacy settings.

Q: I had an employee call in sick, but was reported to be posting on her social media profile that she was at an amusement park for the day. Can I terminate the employee for this?

A: Such information, if obtained legally, can be used as evidence of employee misconduct. However, a city employer should carefully document the information used and provide the alleged violator an opportunity to explain.

Q: I have an employee out of work on workers' compensation. He posted pictures of himself doing physical activities that would conflict with his injury report. What should I do?

A: Such information, if obtained legally, should be forwarded to your city's workers' compensation provider (i.e., Tennessee Municipal League Risk Management Pool) or attorney that specializes in workers' compensation fraud.

Attorneys Gregory M. Duhl and Jaclyn S. Millner (William Mitchell College of Law) produced a detailed legal study on "Social Networking and Workers' Compensation Law at the Crossroads" in September 2010. It can be obtained by going to <http://ssrn.com/abstract=1675026>.

Q: I have an employee that complained of being harassed by another employee online during and after working hours. What is my legal obligation to investigate? How do I handle the investigation if the profile/ messages in question are private and not generally accessible?

A: Workplace harassment can occur at or outside of the workplace. If an employee is harassing a coworker online or elsewhere, the city has a duty to investigate upon becoming aware. The harassed employee has the duty to provide copies or transcripts of the alleged harassment if contained in private messages or profiles.

Q: Can we restrict all access to all social media sites during work hours?

A: A city, via an internet use policy, can prohibit or allow whatever internet access it deems in the best interest of the city. This includes banning employees from accessing the sites on their breaks and at lunch. Be aware however, that most employees can access the internet and their social media profiles through a handheld device or a cell phone.

Q: We have an employee making negative comments under our social media stories and announcements. This is reflecting negatively on us as an employer. Should we delete those comments? What about free speech?

A: The city's social media site should contain clear posting guidelines which should state criteria for removing obscene or inappropriate posts. When an employee is posting in his or her official capacity, the content can be more heavily regulated. However, when the employee is not holding himself out to



be an employee, he should receive the same free speech protections as any other citizen.

Q: We have a police officer that posted pictures of themselves in an official uniform drinking and partying. What can the city do about this? What if he/she was not wearing their uniform but their pictures are still accessible?

A: Such situations should be addressed by the department's policy on off-duty conduct unbecoming an officer. The city should also evaluate their social media policies to determine if this conduct is addressed appropriately. As mentioned earlier in this publication, the department may want adopt a separate social media policy to address off-duty social media behavior. It is important to note, while the conduct may be viewed as unbecoming, there may be no legal basis for discipline.

Q: Can social networking be considered campaigning on the job, and therefore illegal?

A: Yes, if the activities engaged in on social media meet the legal definition of campaigning then such activity could be illegal while on duty. However, true networking without political endorsement is not likely campaigning.

Q: What is MTAS' stance on using social media in the hiring process? Should we or shouldn't we?

A: MTAS' role as an advisory agency is to make you aware of the implications of such a practice. It will be up to your city to determine what role social media plays in your hiring process and background checks.

Q: Mary Smith had inappropriate information on her social media profile. My boss, the mayor has directed me to fire Ms. Smith and advise her we are at-will and may terminate at any time, and not provide her with any additional information. Is this legal?

A: Tennessee is an at-will employment state. An employee or employer may terminate the employment relationship for cause, for no cause, or any cause that doesn't violate the law.

Q: We have a long-time employee that has cancer. She has authorized us to do a charity dinner on her behalf. Can we put this on our social profile?

A: It is not recommended that you discuss an employee's health condition except for what is included in the scope of business necessity (i.e., FMLA paperwork, ADA etc). Health statuses and genetic information should be considered confidential and protected information. This health condition should not be advertised by the employer, even if the employer is attempting to do good will.

Q: We have an employee that talks on his personal blog about serious health condition, but he has never come to us to request an accommodation under ADA. What should we do?

A: Nothing. Under ADA the employee would need to have direct dialogue with the employer (assuming the issue was not obvious). While the employee is not required to use the words "ADA or accommodation" they should be able to articulate a work issue or work barrier before the employer can evaluate the situation and determine a reasonable accommodation.

HOW DOES YOUR CITY USE SOCIAL MEDIA?

This publication will be updated regularly. If your city would like to provide information on the use of social media please contact Bonnie Jones at bonnie.jones@tennessee.edu.



Appendix A: Sample Social Media Policy for Cities

City of _____

RESOLUTION NO. _____

A RESOLUTION ADOPTING A SOCIAL MEDIA USE AND INTERNET POSTING POLICY

WHEREAS, The prevalence of online social media has made personal expression on public or semipublic Web sites commonplace; and

WHEREAS, The free speech rights afforded by the United States and Tennessee Constitutions are of utmost importance to the city, its officials and employees; and

WHEREAS, The city of _____ has an interest in cultivating and maintaining a positive presence on the internet. NOW THEREFORE,

BE IT RESOLVED by the _____ (*insert name of governing body*) that the following is hereby approved and adopted:

SOCIAL MEDIA USE AND INTERNET POSTING POLICY

SECTION 1. APPLICABILITY

1.1. This policy applies to every employee, whether part-time, full-time, currently employed by the city in any capacity who posts any material whether written, audio, video or otherwise on any Web site, blog or any other medium accessible via the internet.

1.2. For purposes of this policy social media is content created by individuals using accessible and scalable technologies through the internet. Examples include: Facebook, blogs, MySpace, RSS, YouTube, Second Life, Twitter, LinkedIn, Google Wave, etc.

SECTION 2. CITY-OWNED OR CREATED SOCIAL MEDIA

2.1. The city maintains an online presence. An employee may not characterize him or herself as representing the city, directly or indirectly, in any online posting unless pursuant to a written policy of the city or the direction of a supervisor.

2.2. All city social media sites directly or indirectly representing to be an official statement of the city must be created pursuant to this policy and be approved by _____ (*insert name of approving official*).

2.3. The city's primary and predominant internet presence shall remain _____ (*insert city Web site*) and no other Web site, blog or social media site shall characterize itself as such.

2.4. The _____ (*insert department or employee*) is responsible for the content and upkeep of any social media sites created pursuant to this policy.

2.5. Whenever possible a social media site shall link or otherwise refer visitors to the city's main Web site.



2.6. In addition to this policy all social media sites shall comply with any and every other applicable city policy including but not limited to:

- a. Open Records Policy
- b. Internet Use Policy
- c. IT Security Policy
- d. Ethics Policy
- e. Records Retention Policy

2.7. A social media site is subject to Tennessee's Public Records Act (T.C.A. § 10-7-101, *et seq.*) and Open Meetings Act (T.C.A. § 8-44-101, *et seq.*) and no social media site shall be used to circumvent or otherwise in violation of these laws. All information posted on a social media site shall be a public record and subject to public inspection. All lawful records requests for information contained on a social media site shall be fulfilled by _____ (*insert official or employee*) and any employee whose assistance is necessitated. Every social media site shall contain a clear and conspicuous statement referencing the aforementioned state laws. All official postings on a social media site shall be preserved in accordance with the city's records retention schedule.

2.8. A social media site shall also contain a clear and conspicuous statement that the purpose of the site is to serve as a mechanism for communication between the city and its constituents and that all postings are subject to review and deletion by the city. The following content is not allowed and will be immediately removed and may subject the poster to banishment from all city social media sites:

Comments not topically related to the particular social medium article being commented upon;

Comments in support of or opposition to political campaigns or ballot measures;

Profane language or content;

Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability or sexual orientation;

Sexual content or links to sexual content;

Solicitations of commerce;

Conduct or encouragement of illegal activity;

Information that may tend to compromise the safety or security of the public or public systems; or

Content that violates a legal ownership interest of any other party.

2.9. The city will approach the use of social media tools, software, hardware and applications in a consistent, citywide manner. All new tools, software, hardware and applications must be approved by _____ (*insert employee or official*).

2.10. Administration of city social media sites.

The _____ (*insert official, employee or department*) will maintain a list of social media tools which are approved for use by city departments and staff.

The _____ (*insert official, employee or department*) will maintain a list of all city social media sites, including login and password information. Employees and officials will inform the _____ (*insert official, employee or department*) of any new social media sites or administrative changes to existing sites.



The city must be able to immediately edit or remove content from social media sites.

2.11. For each social media tool approved for use by the city the following documentation will be developed and adopted:

- Operational and use guidelines
- Standards and processes for managing accounts on social media sites
- City and departmental branding standards
- Enterprise-wide design standards
- Standards for the administration of social media sites

SECTION 3. NON-CITY SOCIAL MEDIA SITES

3.1. An employee may not characterize him or herself as representing the city, directly or indirectly, in any online posting unless pursuant to a written policy of the city or the direction of a supervisor.

3.2. The use of a city e-mail address, job title, official City name, seal or logo shall be deemed an attempt to represent the city in an official capacity. Other communications leading an average viewer to conclude that a posting was made in an official capacity shall also be deemed an attempt to represent the city in an official capacity.

3.3. Departments have the option of allowing employees to participate in existing social networking sites as part of their job duties. Department heads may allow or disallow employee participation in any social media activities in their departments.

3.4. Any postings on a non-city social media site made in an official capacity shall be subject to the Tennessee Open Records Act and the Tennessee Open Meetings Act.

3.5. An employee or official posting on a social media site shall take reasonable care not to disclose any confidential information in any posting.

3.6. When posting in a non-official capacity an employee or official shall take reasonable care not to identify themselves as an official or employee of the city. When the identity of an employee or official posting on a non-city social media site is apparent, the employee or official shall clearly state that he or she is posting in a private capacity.

This resolution will take effect immediately upon its passage, the public welfare requiring it.

Approved this _____ day of _____, 20____.

Mayor

Attest:

City Recorder



Appendix B: Local Government Guide

- Knoxville:** The city of Knoxville has a Facebook page with more than 2,900 fans. The city provides information festivals and events, zoning, meetings, park information, road closures and more.
- Gatlinburg:** The city of Gatlinburg has a Facebook page with bragging rights. With more than 35,000 fans, they are continually providing information about events and promoting tourism on their page. Their page is clearly a must stop for people looking for information about visiting Gatlinburg.
- White House:** The city of White House hosts a Facebook page and has almost 1,300 fans. They post updated information on public works, garbage pickup, flood relief, an event calendar and more.
- Bristol:** The city of Bristol has a Facebook page with more than 600 fans. An impressive page that allows constituents to watch views and virtually “meet” their officials. Bristol uses short video clips to engage their fans and share information with the community.
- Winchester:** The city of Winchester has a Facebook page with more than 2,000 fans. They provide information on building and codes, new home sales, city sponsored events, and old family and city photos. The city reaches out to their citizens with photo contests and they seem to do a great job sharing pictures of events with the community.
- Memphis:** The city of Memphis has a busy Facebook page with more than 6,000 fans. Although the page is titled with the mayor’s name, there is a direct link to the page from the city’s main Web site.
- San Francisco, Calif:** The city of San Francisco, Calif., is using social media as a way to interact with citizens. Their public works The city of San Francisco, Calif., is using social media to interact with their citizens. The Public Works Department has a fully functional Facebook page that showcases before and after photos of live projects, provides street paving information, clean team events, landscape projects, employee kudos, Adopt-a-Street and much more.
- Washington, D.C.:** Washington, D.C. (District Department of Transportation) allows their constituents to tweet or text message their road concerns to the city. D.C.’s Twitter account can be accessed at: <http://twitter.com/DDOTDC>. Their Web site says: To report a pothole, residents and commuters can contact DDOT in a variety of ways: 1) call the Mayor’s Call Center 2) use the On-line Service Request Center at www.dc.gov, 3) text message or Tweet to twitter.com/DDOTDC, or 4) e-mail to Potholepalooza@dc.gov.



- Government Networking:** Govloop.com is a popular social media site for government employees and has more than 30,000 members and provides networking for local, state, and federal employees. Recently, two MTAS staff assigned to an information technology (IT) advisory committee joined govloop.com as a means to network with other IT nonprofit groups dedicated to improving the quality of technology in the government sector. They now have access to thousands of other technical employees in the government/nonprofit world. Govloop.com allows them to instantly connect with others in their same field. They can participate in discussions; answer each other's questions, share presentations and ideas, find speakers for their next symposium, and share information while keeping up with the latest trends in technology.
- Boston, Mass.:** The city of Boston recently created an interactive award winning smart phone application for citizens to report graffiti, potholes, broken streetlights, road problems, and other city issues in the city of Boston. The application is called Boston Citizens Connect and allows users to report problems 24/7. Users can snap a photo on their phone and send it to the city all in the span of a few seconds. The picture is sent and the location's coordinates are automatically embedded in the picture. After a complaint is made a red dot shows up on a map that can be seen with the iphone. When the problem is fixed the dot changes to green.
- Clearwater, Fla.:** The city of Clearwater uses social media to connect with citizens. Clearwater uses its Facebook page to announce events such as the opening of senior centers, street closures, citizens academies, children's events, safety information on stingrays, beach advisories, holiday trash pickup schedules and more.
- Garden City, Kan.:** Garden City uses Facebook, Twitter, and YouTube to reach out to their community. They recently reminded their citizens that it is now illegal to text and drive. Their YouTube site hosts videos such as parade footage, ribbon cutting ceremonies, golf tournaments, the mosquito control program and more.
- Virginia Beach, Va.:** The city of Virginia Beach offers interactive Facebook exchanges and responds to all citizen inquiries live on the page. One citizen wrote on the page to ask when the new high school would be completed, and someone from the city promptly responded with dates, acreage, and helpful sites. This is not only visible to the person who asked the question but any one of their 3,200+ fans. In another entry, the city asked its citizens what they thought of the city's bikeways and trails and provided them with a link to take a survey. Constituents were free to leave comments under the story and many did.
- U.S. State Department:** The U.S. State Department has jumped on the social media bandwagon. They recently announced they would be creating an internal social networking site that will allow collaboration among employees and more efficient operations.



U.S. Census Bureau:

The U.S. Census Bureau boasts more than 95,000 fans on their Facebook page. They also use Twitter and YouTube to reach out to the public. Their front page hosts a direct link to their “comment policy” which clearly states all comments are public domain.

**Health Reform —
Federal Government:**

The federal government has launched a Facebook page with health reform information. It is integrated with the healthcare.gov Web site and allows users to access all of the same features including searching for health insurance. Here is an article on the Facebook launch.

CITATIONS

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