

Risk Monitor



Protect Your Business by Giving Employees Rules for Social Media

Business use of social media tools (also known as “social networking tools”) has taken off in recent years. Organizations of all types and sizes are reaching out to customers with blogs, podcasts, networking Web sites like Facebook and LinkedIn, and micro-blogging services like Twitter. These technologies are new and exciting, and present vast new opportunities for publicizing a brand. However, a business using any new technology assumes certain risks. Employees using them may let confidential information slip. They may post text, pictures or videos that embarrass the organization. Individuals outside the organization may make negative comments on the organization’s blog or Facebook page. To minimize these risks, every business using these technologies should develop social media use policies.

The first thing managers must decide is how they feel about social media -- do they favor it for business use, consider it a personal pastime for employees to use only on their own time, or are they ambivalent about it? Management’s attitude toward these sites will shape the resulting policy. With that decided, there are several other issues managers must consider for the policy.

- What exactly does the business mean by the terms “social media” or “social networking”? Is it just Facebook, LinkedIn and Twitter? Is it other blogging sites, such as Live Journal? Does it include blogs on newspaper and business news Web sites? What about business-related podcasts, including video podcasts? Before managers can set rules for using social media, they must decide what social media is.
- Should the organization permit employees to identify themselves as employees on these sites? Anything employees say or do will reflect on the organization. If they conduct themselves professionally, they will bring credit to the organization, but the reverse will happen if they post inappropriate material or get into arguments that amount to little more

than trading insults. Even on personal blogs and Facebook pages, employees who identify their employers can reflect on them. Employers should consider asking employees to post disclaimers stating that their posts do not represent the company’s opinion.

- Should the organization permit employees to recommend other individuals? LinkedIn and other sites let members post recommendations of other members. If a member recommends a person, a company accepts that recommendation and has a bad experience, and the company interprets the member’s recommendation as coming from that member’s employer, the company may try to hold the employer legally liable. Employers must decide whether the risk is so great that they should prohibit employees from doing this.
- Protecting the names of the innocent. Employees may write about customers, partners and associates on company-approved blogs. Not everyone wants their name, problems, or purchases displayed on a blog for millions of people to see. The policy should require employees to leave other organizations and individuals anonymous unless they have permission to do otherwise.
- Protecting confidential information. Most employees have enough common sense not to post company confidential



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As we’re typing this greeting, the winter snow is upon many of our clients’ locations and spring rains seem a long way away. However, the thaw will come with the possibility of flooding. Flooding is excluded on virtually all property and most inland marine policies. Even with the news coverage of flooding, many of our commercial clients are all too willing to self-insure this exposure until the waters are rising. Surprisingly, we still find that most homeowners must be compelled to purchase this coverage by their lender. Flood policies usually require a 30 day waiting period and as such call us now to discuss insuring this peril at both the primary and excess levels (317)-844-7759.

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Manage Risk with Hold Harmless Agreements and Contractual Liability Insurance

Lawsuits are a common occurrence in our litigious society. An effective way to limit your liability is to specify your responsibility in a contractual relationship. Risk can be transferred contractually by including “hold harmless” clauses in agreements.

In a hold harmless agreement, one party agrees to protect or “indemnify” another from claims brought by a third party for financial loss or damage. A good example is a general contractor who hires a subcontractor to complete a job for a third party. To protect himself, the general contractor may require the subcontractor to sign a hold harmless agreement. The agreement would indemnify the general contractor if any problems arose from the subcontractor’s work.

Read...Before You Sign on the Dotted Line

In a hold harmless agreement, the indemnitor (the party that has assumed the liability) is responsible for all financial loss. Some hold harmless clauses are very broad. Surprisingly, they may include liability even if the indemnified company was solely responsible for the damage. On the other hand, a contractual liability insurance policy can protect the indemnitor, but may not cover all aspects of liability.

In our example above, the hold harmless agreement gives the general contractor the right to collect for damages paid to the third party to the extent enforceable under the law. However, the indemnified party should exercise caution. The ability to uphold indemnification agreements differs from state to state because state laws vary as to what risks may be transferred. Also, some courts have ruled indemnification clauses unenforceable if they were not clear and precise.

Protect Your Assets

With a general liability policy, contractual liability insurance is automatically provided. The coverage is created to pay to a third party damages assumed as part of an “insured contract.” However, the definition of an insured contract is limited, and coverage is written as an exception to an exclusion. That means the policy excludes coverage except for specific circumstances. Additional policies, such as professional liability insurance, may be required to cover exposures that are not covered under general liability policies.

Usually, general liability insurance covers only bodily injury or property damage. But, once again, these are subject to exclusions, conditions and limitations, and the injury or damage must have occurred after entering into the contract.

Furthermore, the liability must be one that would be imposed without the contract or one that is assumed in a hold harmless or indemnity agreement that falls within the definition of insured contract under the policy. General liability policies do not cover breach of contract.

Before signing any contract, it is wise to talk to an attorney, so that you do not assume liability that is not covered under your general liability insurance policy. Take time to carefully read your insurance policy endorsements, and don’t be afraid to ask your insurance agent to explain anything you do not understand. Your agent will help you determine the type of coverage your business needs to protect your assets.

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information in public forums, but they might have a false sense of security about exchanging it in private messages with other authorized individuals. Social networking sites are computer networks, and networks are always vulnerable to hacking. The policy should require employees to use other, more secure methods of communication for confidential topics.

- **Priorities.** Social media sites are terrific networking and marketing tools, but they can also be horrendous time sinks. Employees can easily and unintentionally get caught up in blog-writing or checking Twitter, with the result that their productivity slips. The policy should emphasize that employees are still responsible for completing their regular work.

- **Consequences for violating the policy.** To be fair, organizations must inform their employees of the rules and the consequences of breaking them. Setting and enforcing these consequences will show employees how serious the organization is about the policy. Businesses can effectively use social media to reach new customers, communicate with old customers in new ways, and grow their brands. All organizations should seriously consider using some or all of these tools. With some common sense rules in place for employees, businesses can reap great rewards from these exciting new technologies.





Save on Workers' Comp with a Creative Return to Work Program

The National Safety Council has estimated that employers annually lose 80 million work days to illnesses or injuries suffered on the job. The federal Bureau of Labor Statistics reported that, in a recent year, 1.2 million workers missed an average of seven days of work due to occupational health problems. The resulting cost in lost productivity, disability benefits, and workers' compensation premiums is enormous. However, these are costs that employers can reduce with a little creativity. Often, treating physicians will release an injured worker for return to some work duties after a relatively short period of time. While the worker may not yet be ready to resume his former duties, he can still perform some work for the employer. To enable this to happen, the employer needs a return to work program and policy.

The idea behind return to work programs is to provide temporary jobs that (ideally) take into account an injured worker's physical capabilities, skills and interests. A good program encompasses several objectives:

- Addressing factors - physical, environmental, emotional, knowledge - that prevent the employee from returning to work full-time.
- Focusing on what the employee can do rather than what he cannot do.
- Easing the transition from temporary work assignments to full-time regular work.
- Maintaining productivity by decreasing the number of lost work days.
- Improving the employee's morale and increasing incentives for him to return to work and stay there.

The benefits to employers from return to work programs are many.

- They make it easier to retain valued employees and to obtain some production from those recovering from injuries.
- Because they help retain employees, they reduce recruiting, hiring and training costs.
- They show the employer's concern for the welfare of injured employees.

- They reduce the duration of disability payments to injured workers and may also reduce associated medical costs.
- They facilitate communications between the employer, the employee and the health care provider.
- They make it more difficult for unmotivated employees to stay out of work.
- Over the long term, they reduce an employer's workers' compensation claim costs, making the employer more attractive to insurance companies and inviting competitive pricing.

Return to work programs also accelerate an employee's recovery process. According to the California State Compensation Insurance Fund, half of all employees who stay out of work for six months or more never return to their former jobs. Those who are out for more than a year have only a ten percent chance of returning. Most workers want to feel like they are productive and contributing. Getting an injured employee back to work early heightens those feelings of accomplishment and increase the chances that he will eventually return to his old job. It also helps him maintain his job skills and reduces the adverse impact of the injury on his family.

The return to work policy should include the following elements:

- Employee eligibility criteria.
- Provisions requiring assignment of meaningful tasks to the employee, not busy work such as "counting paperclips."
- Descriptions of the types of duties to which an injured employee may be assigned.
- Stated parameters for the length of time a temporary assignment will last and conditions for extension.
- Provisions covering situations where an employee returns to work and subsequently has to take additional medical leave.
- Provisions for alternative work arrangements acceptable to the employer, such as telecommuting.

Workers' compensation is a major part of personnel costs for any employer. Well-executed return to work programs can help employers reduce those costs, recover productivity that would have been lost, and keep good employees happy. That's a good outcome for everyone.

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If your safety record is already solid, talk to your insurance agent about changing to a loss-sensitive insurance rating plan. These plans, which normally apply to workers' compensation insurance but can also apply to other coverages, adjust your premium based on your loss experience during the policy term. Very large contractors may want to consider a retrospective rating plan, which bases the final audit premium almost entirely on the contractor's loss experience during the term.

Contractors with sound safety practices stand to benefit enormously from this type of approach.

The economy will eventually rebound. When it does, the companies that were proactive during the slowdown will reap handsome rewards in the form of more contracts, higher revenue and greater profits. By investing in efficiency, safety and training, contractors will be poised for future growth. The economy is at a standstill; your business shouldn't be.

Don't Let a Slow Economy Stop Risk Management

The recession that started in December 2007 has had a major impact on the construction industry. The demand for new homes has collapsed along with the general housing market. Owners of commercial projects have put them on hold, either due to lack of financing, cash flow problems, or lack of demand for the space. While surviving may seem like the top priority for contractors, a period of economic slowdown might be the perfect time to take steps that will plant the seeds for long-term profitability.

One step with an immediate payoff is using equipment more efficiently. Are employees making unnecessary trips up and down ladders to retrieve tools and materials? Consider using scaffolding or scissor lifts, which will allow the worker to bring all necessary materials in one trip while also keeping him safer than a ladder would.

Now may be an excellent time to review contracts with an eye toward inserting clauses to improve worksite safety. For example, you might want to require tools with safety enhancements, specific fall protection measures on scaffolding, footwear that meets a specific protection standard, or eye protection. Improved safety practices will reduce liability insurance claims and make the business more attractive to insurance companies, resulting in lower rates.

During a slow economy, you probably have downtime between projects. Use this time to think about how to improve safety on the next job. Meet with the general contractor to discuss ways to prevent accidents. Meet with the subcontractors who will bid on the work. Ask them about how they will prevent accidents from happening. Take their answers into consideration when you evaluate their bids.

Don't forget training. A downturn affords you time you didn't have before to train employees on safety, different types of projects (such as environmentally sensitive jobs), and more efficient work processes. When the recovery comes, you will be in a position to bid on more and different jobs and your safety practices will make you attractive to general contractors.

Along with training, consider replacing outside safety consultants with your own jobsite superintendents. Give the supers the training they need to effectively manage worksite safety. This will give you stronger supers, allow for immediate safety improvements on the job, and save money that would have been spent on consultant fees and higher insurance premiums.

Arrange meetings with the loss control professionals at your insurance company. Ask them to evaluate your worksites, provide training materials, or even to come in and discuss loss prevention with your workers.

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