Changes Ahead For Social Media In the Workplace

Social media has come a long way over the last few years. Services like Facebook and Twitter are no longer just ways to casually communicate, but can provide companies with a wealth of insight about consumer and employee behavior. As social media continues to evolve at a rapid clip, it's safe to say that the related legal challenges in the workplace will, too.

In a recent webinar, “Social Media in the Workplace—What Is Trending for 2014?”, attorneys from Mayer Brown took a hard look at the legal landscape for social media in the work environment. Michael Lackey, a partner at Mayer Brown who helped lead the webinar, explained that social media is “blurring the lines between personal and professional life” in profound and important ways.

“The change with social media, as I think we’re all aware, is it’s not a one-on-one communication,” he said. “Here are opportunities for someone to go out and really impact, make a statement that can reach an extraordinarily large group.”

Another important factor, he explained, is the fact that while many people think they can be anonymous online, “the reality is: you’re really not.” Hackers have proved recently that they can identify and target individuals by creating profiles based on information they find on social profiles. There’s also the fact that what a user does on social media services doesn’t necessarily go away. Lackey said in the course of litigation his firm has had to look through hundreds of pages of Facebook wall posts and private messages, for example, and there is far more out there. Just on Facebook alone, there is a record of ads viewed, conversations, sign-on times, photos posted, deleted photos and friends, and more.
“This kind of rich information is out there and leaving these digital trails across the social media spectrum,” said Lackey. “So what does that mean? As a lawyer and a litigator it means if I’ve got a case and there are key people in that case, that’s information I’m going to want.”

Archis Parasharami, another Mayer Brown partner on the webinar, explained that social media can potentially be useful in litigation—particularly if there’s a “he said/she said” aspect to the case.

“Social media provides a verifiable way to prove issues that would have been contested in the past,” he said. In a wage and hour employment case, for example, Twitter or Facebook pages someone can show whether a person was actually hard at work or not.

As for where the courts stand on using these social media posts in cases, Parasharami noted that it’s rather mixed—courts sometimes permit discovery but won’t allow “fishing expeditions” into a user’s social media record.

Levels of privacy settings on social media sites are important, too. “That choice that the employee makes can make a big difference in whether the material is deemed a proper subject of discovery,” he noted.

As for the use of social media when hiring, the webinar explained that the trend seems to be to limit required disclosure of social media login information by job applicants. Laws prohibiting this have passed in 13 states as of the end of 2013, and as of January 7, 2014, are pending in another 16.