

Current privacy and social media issues for employers

Employment and Labour Seminar

25 May 2018

Privacy and social media

Use of social media raises privacy implications for both employers and employees

OMG! The CEO liked my Tweet about privacy.

Do employers “like” social media



YES ...

- for brand promotion
- recruiting



BUT...

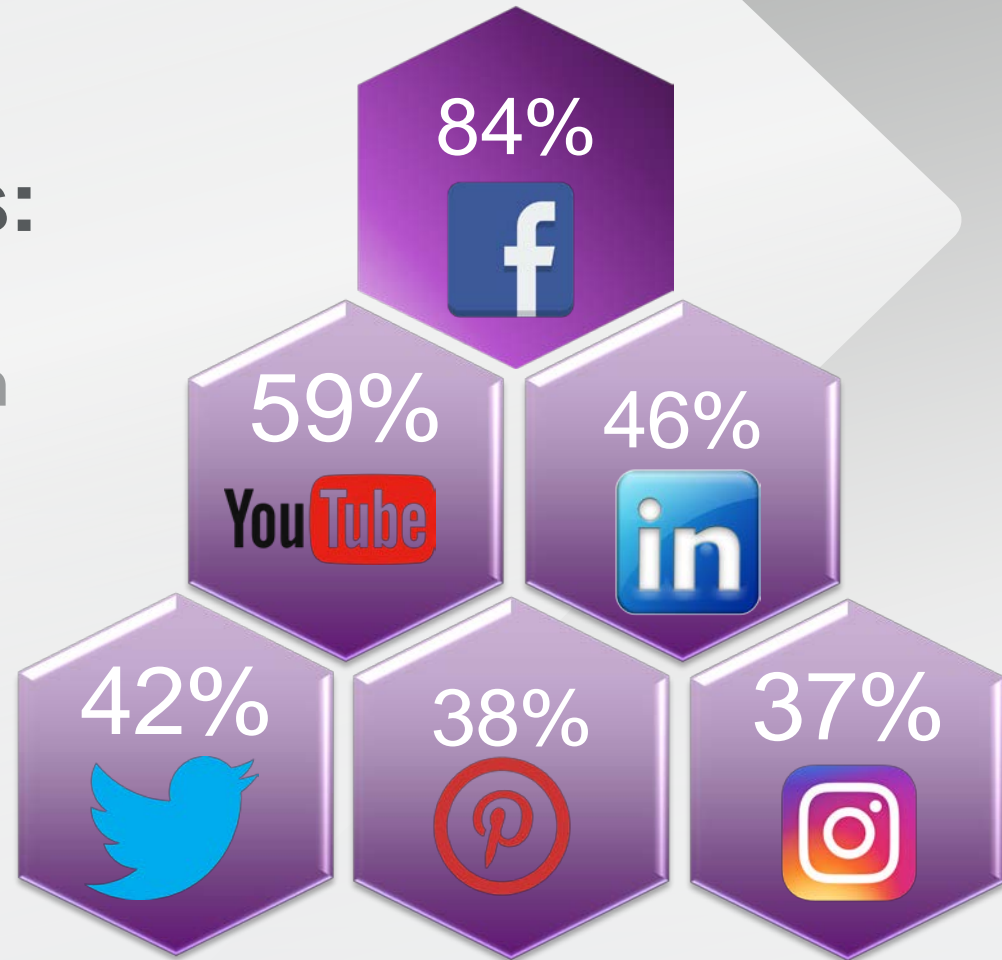
- resources wasted
- risks: instantaneous dissemination of information

Social media

... hard to avoid

Risks for employers:

- Disclosure of confidential information
- Virtual harassment
- Time wasted at work
- Downloading viruses
- Defamation



Source: Survey conducted June 1–July 15, 2017.
“State of Social Media in Canada 2017”
Ryerson University Social Media Lab

Canadian legal landscape

Social media policies are enforceable

- No regulations in Canada prohibiting the imposition of social media policies in the work place
- Terminations or disciplinary actions of employees upheld by labour arbitrators based on content posted by employee on social media, where justified
- **But..**
 - Where incidents isolated, termination considered excessive response; alternative disciplinary actions ordered



Canadian legal landscape

Social media activity in contravention of company policies

- Grievor made Facebook statements disrespecting First Nations people
- Requirement for respect was articulated as part of the Company's "First Nations values", as stated in the Employee Policies and Procedure Handbook
- The termination was upheld arbitrator - single post was held to justify termination
- Grievor's misconduct had the potential for significant detrimental effect on the company's reputation and ability to conduct its business

Facebook statements were "despicable and the denigration of the company's customers who are First Nations and owners of the company is crystal clear".

Wasaya Airways LP v. Air Line Pilots Assn., International (Wyndels Grievance), (2010), 195 L.A.C. (4th) 1

Canadian legal landscape

Social media activity in contravention of company policies

- Grievor made series of sexist, misogynist and racist comments on his Twitter account
- Terminated for inappropriate off-duty use of his Twitter account in violation of the employer's Human Rights and Anti-Harassment policy
- The termination was upheld by arbitrator
- Conduct has harmed the reputation of the employer and his conduct has impaired his ability to fulfill the complete range of responsibilities of a firefighter

Toronto (City) v. Toronto Professional Fire Fighters' Association, Local 3888, 2014 CanLII 76886 (ON LA)

"When engaging in social media use, the user must accept responsibility when the content of his or her communications is disseminated in exactly the manner promoted by the social media provider"

Canadian legal landscape

Social media activity discussing employer's actions

- Canada Post clerk made postings on her Facebook account over a one-month period, many of which contained threats and cruel comments about her supervisors and the employer
- Two of the targets of these postings required significant time off work for emotional distress
- Termination was upheld by arbitrator

Canada Post Corp. v. Canadian Union of Postal Workers,
[2012] C.L.A.D. No. 85

“the current case is unprecedented in repeated mockery, threatening language, the vile insults, and the debasement of an identifiable manager”

Canadian legal landscape

Lack of social media policy

- Bus driver terminated based on her prior disciplinary record coupled with inappropriate Facebook posts and lack of remorse for her actions
- Employer did not have a policy with respect social media use by its bus operators
- Termination was found to be an excessive response in that case and ordered that the grievor be suspended for a period of 30 days without pay
- Employees should know that social media posts may be relevant off-duty conduct and the employer's practice of not monitoring social media posts by its employees does not preclude its ability to investigate and take disciplinary actions in appropriate cases

"lack of a specific social media policy [...] does not erase the fact that the grievor should have known that it was wrong to post as she did"

Amalgamated Transit Union, Local 508 v. Halifax (Regional Municipality), 2017 CanLII 10897 (NS LA)

Start with ...

Social media policies

Social media policies

whether use of personal or employer-hosted social media is permitted in the workplace

if allowed, in what context and for what purposes may social media be used by employees

what legislation applies to the collection, use or disclosure of personal information in the workplace

**WARNING:
UNINTENDED
CONSEQUENCES
AHEAD**

consequences of non-compliance with the policy



whether the employer monitors such sites



what other rules may apply to the use of social media in the workplace

policies re proper use of electronic networks with respect to handling confidential information

Complement policy with ...

Education

RULES

- 1. *You can ...*
- 2. *You can't ...*
- 3. *You can ...*
- 4. *You shouldn't ..*

To make sure, implement ...

Technological measures

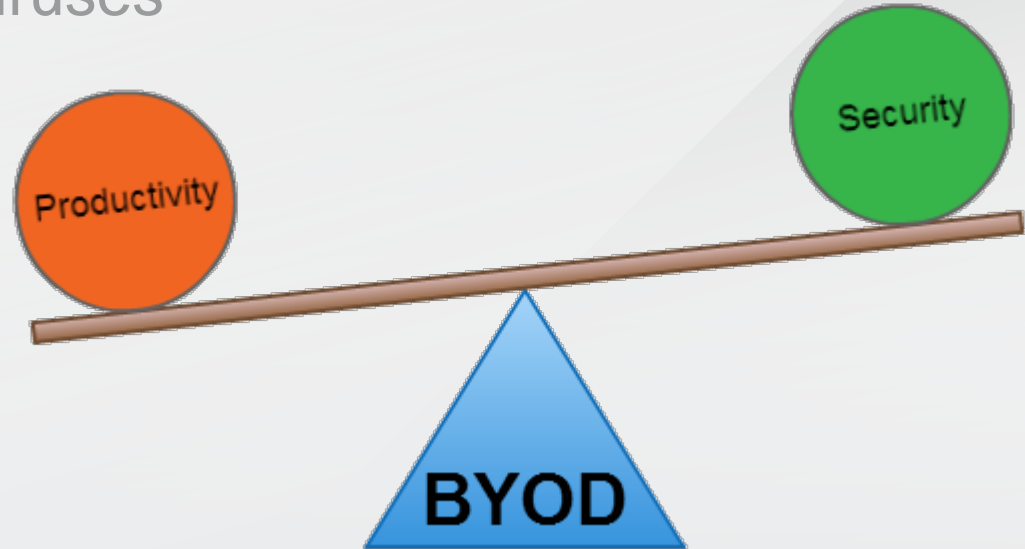
MORE RULES

- 1. Restrict access to confidential accounts on public networks;*
- 2. Use Strong Passwords;*
- 3. Use Two-Factor Authentication;*
- 4. Use VPNs;*
- 5. Ensure Windows Defender and Windows Firewall Are Working*
- 6. Make privacy the default; and*
- 7. Pop-up reminder of Computer Use/Social Media Policy with every log-in.*

BYOD

Risks for employers:

- Employee stealing data
- Employee using device
- Employee device causing a virus
- Downloading viruses



Thank you

大成 DENTONS

Dentons Canada LLP
99 Bank Street
Suite 1420
Ottawa, Ontario K1P 1H4
Canada



Anca M. Sattler
Associate

(613) 783-9635
anca.sattler@dentons.com

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