Social Media Policy Best Practices

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1) Assess the Company's Corporate Culture and Identify the Desired Role of Social Media in the Company's Communication Strategy

The desired role of social media, if any, varies widely among companies. Here are some models to consider (a company may choose to adopt more than one or a blend of several of these):

a) **Embrace and Incorporate Social Media.** Certain employees or teams are tasked with using social media as designated channels of communication with customers or employees (e.g., Company-sponsored blog, Facebook page, message board, etc.).

b) **Permit Some Professional Use of Social Media.** Employees are permitted to use all or certain social media channels for communications related to the company's business or competitors.

c) **Permit Some Personal Use of Social Media.** Employees are permitted to use all or certain social media channels at work for some personal communications. Social media is treated like other technology and equipment provided and maintained by the employer (e.g., telephones and computers).

d) **Restrict All Use of Social Media.** Employees are not permitted to use any or all social media channels: (1) at work (regardless of the content/subject matter) and (2) on personal time, if the content/subject matter relates to the company's business or competitors.

2) Determine the Purpose, Audience, and Tone of the Company's Social Media Communications

a) **Purpose.** Identify the purpose of the communication.

i. Will it be used as a marketing channel, to provide product/service information, as a customer relations mechanism, or to “Get to Know” the company?

b) **Audience.** Identify the targeted audience.

i. Will it be for external or internal communication? Is it targeted to consumers, business partners, investors, employees, professionals in a certain field, etc.? How do the interests and experiences of the proposed audience guide the selection of content?

c) **Tone.** Remember that social media is a “real” form of communication.

i. Due to the use of slang or Textese (SMS language or txtspk such as “lol,” “imho,” “jk,” etc.), social media is often considered an informal communication tool.

ii. A company should treat each message posted on social media as if it is a paid advertisement or formal letter to a customer or partner.

iii. The tone of the social media channel can be adjusted based on the purpose and audience; however, the etiquette that guides a company’s communications on traditional media is just as applicable when using social media.
3) Consider the Risks and Plan Ahead

a) Traditional Laws Apply to Non-Traditional Media. Any content posted to a social media channel should be compliant with all laws and regulations applicable to content used on traditional media. For example, marketing claims made on social media are subject to the same standards as claims made in a print advertisement. Also, comments made to a fellow employee via social media can be harassment, just as if the comments were made in person.

b) Industry Guidelines. Consult industry materials for guidance regarding specific social media executions.

4) Training and Monitoring

a) Training. Provide employees with regular training on the company’s social media policy and require employees to certify that any use of social media on behalf of the company or discussing the company’s business or competitors will be in compliance with the social media policy.

b) Monitoring. Inform employees that any use of social media on the company’s behalf or discussing the company’s business or competitors will be monitored by the company, and that employees have no expectation of privacy when using social media for these purposes.

5) Key Provisions Within a Social Media Policy

a) Transparency. Include provisions requiring a person to disclose his or her connection to the company or product/service.

b) Product/Service Claims. Include provisions requiring substantiation for product/service claims.

c) Content. Include provisions addressing the use of original and third party content (including text, images, and other protected material).

d) Offensive Content. Include provisions restricting illegal or offensive content.

e) Protect Company Information. Include provisions restricting disclosure of the company’s confidential or proprietary information including customer and employee information.

f) Other Company Policies. Include provisions addressing obligations from other company policies.

g) Social Media Site Rules. Include provisions requiring a person to comply with posting guidelines and terms of use on the site where content is posted.

h) Responsibility. Include provisions addressing the person’s potential legal responsibility for posts.

i) Mistakes. Include practical guidance on how to address mistakes.

j) Etiquette. Include practical guidance on communicating politely and professionally (even if using a less formal tone).

k) If Something Doesn’t Feel Right. Include practical guidance on reporting unusual or suspicious online activity to the company.
6) Protection from Claims for Posts by Third Parties

a) Ensure that social media practices are structured to benefit from protections under the Communications Decency Act (CDA) and Digital Millennium Copyright Act (DMCA) from claims for posts by third parties.

i. **CDA Immunity**. CDA Section 230 provides an interactive computer service with an immunity for posts made by a third party. Avoid posting content that “materially contributes” to the offensive content posted by a third party, which may destroy the immunity (see *Fair Housing Council v Roommates.com, LLC*, 521 F.3d 1157 (9th Cir. 2008)).

ii. **DMCA Limitation on Liability**. Section 512 of the Copyright Act, as amended, limits the liability of service providers for copyright infringement when the material was posted by a third party. Establish DMCA-compliant notice and takedown provisions to govern the site.

b) **Monitor Content Posted Through Social Media**. To effectively manage risk and to present the appropriate company image, the company should regularly monitor content communicated through social media, and remove content that conflicts with the Social Media Policy, or is otherwise deemed inappropriate.

Resources

CDA § 230: [http://www.law.cornell.edu/uscode/html/uscode47/usc_sec_47_00000230----000-.html](http://www.law.cornell.edu/uscode/html/uscode47/usc_sec_47_00000230----000-.html)

DMCA § 512: [http://www.law.cornell.edu/uscode/html/uscode17/usc_sec_17_00000512----000-.html](http://www.law.cornell.edu/uscode/html/uscode17/usc_sec_17_00000512----000-.html)


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