

Establish blogging boundaries with a permissive policy

By [MARK VALPONI](#)

6:00 am, February 13, 2006

Your employees show you a blog written by another employee. In it, the blogger rants about his ignorant co-workers and his egomaniacal boss — you.

How can your company protect itself from damaging statements like these? Can you legally prohibit or regulate the use of a blog? And if the information is already out there, what rights do you have to sue the blogger? Are his statements protected by the First Amendment?

With more than 8 million people — 7% of U.S. Internet users — maintaining online journals or web logs, commonly known as blogs, chances are that a blogger negatively could affect your business.

Since blogs can reach a large audience, the damage caused by statements made can be significant, hurting a company's reputation and its bottom line.

While companies cannot legally prohibit employees from blogging at home on their own computers, employers can prohibit blogging on company time using company equipment.

More importantly, companies in Ohio can dismiss employees at will and are not required to provide a reason for firing. However, terminating public employees, union members and employees protected by employment contracts or anti-discrimination laws might be more difficult.

Specifically, companies can terminate employees and even take legal action against them if they make disparaging or otherwise prohibited remarks about the company or post confidential company information, regardless of whether the comments were made while blogging at home or at work.

In one such case, Google Inc. successfully fired one of its employees for disclosing corporate secrets on his personal blog.

Many bloggers mistakenly believe their right to post comments is protected by the First Amendment when, in reality, employees of private companies generally do not have First Amendment protection regarding workplace speech.

Free speech laws apply in situations between an individual and the government, not between an employee and a private employer. There are some caveats, however.

Comments made in a whistle-blower situation where there is a public interest can be protected under the whistle-blowing statutes. In some situations, blogging can be characterized as 'concerted activity' and thus protected under the National Labor Relations Act regardless of union presence.

A company's best defense against negative blogging is to establish a policy. A policy can help to avoid misunderstandings if the dos and don'ts of blogging are articulated clearly along with disciplinary actions for infractions.

What's more, a policy can help to protect an employer from liability. For example, in Ohio, if a supervisor makes sexually harassing comments about a subordinate on a blog, the company can be found liable if company executives knew about the supervisor's comments and failed to address the situation adequately.

Some companies strictly prohibit any blogging that mentions the company, its workers, products or customers. Others grant limited permission (a 'permissive' policy) to mention the company's name, but only with approval and under strict guidelines that require a blogger to make clear that he or she is not speaking on behalf of the company, and prohibit the disclosure of confidential information and defamatory statements against the company and its employees.

When writing a permissive policy, companies should:

- Require a disclaimer. The blog should state that the opinions expressed are those of the employee and not of the company, and that the blogger is responsible for all content.
- Require bloggers to be civil. The policy should prohibit an employee from making derogatory statements against an employer, employees, the company's products or customers.
- Prohibit use of confidential information. Employers should insist that bloggers never release confidential information about the company, such as trade secrets, customer lists and pricing data.
- Prohibit use of trademarks and logos. Policies should clarify if and when the company's name, logos and trademarks can be used. Most permissive policies, however, prohibit the posting of company logos and trademarks.

In developing blogging policies, as with employee e-mail and Internet use policies, companies should let employees know the company may monitor blogs at any time for inappropriate content. Services such as Technorati and Google's blog search engine can help companies to monitor blogs.

If a company deems a blog inappropriate, the company should take steps to remove the blog, being careful to request search engines to remove cache or snapshot versions of the blog that still might be accessible even when the current version of the blog has been removed.

Besides creating a policy, companies can choose to create corporate blogs to allow employees to talk about work-related issues in a medium that easily can be monitored by executives. For example, Sun Microsystems allows employees to post comments on its company blog.

When rules on blogging are defined clearly and employees are aware of consequences, blogging can be beneficial for all involved.

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