

# HUMAN RESOURCES GUIDE



## Healthy Employees, Healthy Business

A healthy and happy workforce is as critical to a company's bottom line as the quality of its products and services. To help ensure businesses keep their employees healthy, achieve high levels of productivity and avoid absenteeism, the physicians of MemorialCare Medical Group and their affiliated MemorialCare Health System hospitals provide workplace wellness programs at local businesses.

In addition to caring for the health care needs of thousands of individuals and families, MemorialCare Medical Group offers hundreds of businesses dozens of customized free health prevention programs, lunch & learn lectures, and screenings at the workplace at times that meet the needs of local companies.

"Our goal at MemorialCare Medical Group is to help businesses stem rising costs of health care, encourage healthier lifestyles, and build health and wellness behaviors, into each employee's daily work life," says MemorialCare Medical Group Chief Medical Officer Mark Schafer, M.D. "Many benefits can arise from our worksite wellness offerings – from reducing absenteeism and the costs of medical services and worker's compensation to improving employee health, morale and productivity."

He cites a University of Michigan study showing health costs for a high-risk worker three times higher than a low-risk employee and an American Institute of Preventive Medicine report that revealed 87.5 percent of health claim costs are due to lifestyle issues. Research also shows that companies implementing wellness activities save from \$3.48 to \$5.42 for every dollar spent and reduce absences 30 percent.

MemorialCare Medical Group offers a number of unique patient programs for employers and the community. These include an online health records portal, which allows patients to connect with their physicians through a secure, web-based portal to send emails for non-urgent medical questions, request appointments and prescription refills and receive test results. For the convenience of patients and families, MemorialCare Medical Group also offers on-site lab and x-ray services at most locations.

MemorialCare Medical Group also provides free classes and speakers on many topics at the workplace and in the community, including heart health, CPR, cancer awareness, allergies, stress management, nutrition, exercise, cold and flu prevention, migraines, summer safety, aging well, children's health, asthma self-management, cholesterol and diabetes care, among numerous other programs. In addition, screenings tailored for the workforce for blood pressure, body mass index, bone density, cholesterol and glucose. Also provided are health risk assessments and wellness tips to help workers on their journey to better health.

One of Orange County's most prominent physician organizations, MemorialCare Medical

Group (formerly Bristol Park Medical Group) was again named one of California's top-rated physician groups by Integrated Healthcare Association. A number of its physicians have been honored with prestigious awards, and it is celebrating its 50th anniversary as one of the county's first and most prominent multi-specialty medicals groups. Earlier this year, along with Memorial Family Medicine Medical Group, Memorial Prompt Care and Family Medicine and Specialty Physicians of Long Beach, it announced a strategic affiliation with MemorialCare Health System and changed its name to MemorialCare Medical Group to better reflect its integration with one of the nation's best-known, not-for-profit health systems. Since then, other physicians also joined MemorialCare



Medical Group.

"While our name has changed, what has not changed is our patients' ability to see their same physicians, nurses and staff with the added benefit of increased clinical integration among their physicians and hospitals," says Medical Director for MemorialCare Medical Group Scott Schiffman, M.D. "This further improves the quality of care that members of our communities receive." MemorialCare Medical Group's 90 physicians are supported by 700 clinical, technical and support staff in multiple locations as well as urgent care centers.

MemorialCare Medical Group is a contracted provider for most major HMO, PPO, POS and EPO health plans including Blue Shield of California, Anthem Blue Cross and UnitedHealthcare.



Schiffman



Schafer

### MemorialCare Medical Group

MemorialCare Medical Group is a member of the not-for-profit MemorialCare Health System, nationally recognized for leadership in best practice medicine and advanced technologies. MemorialCare includes Orange Coast Memorial in Fountain Valley, Saddleback Memorial in Laguna Hills and San Clemente, Long Beach Memorial, Community Hospital Long Beach, Miller Children's Hospital Long Beach as well as MemorialCare Health Express retail clinics at select Albertsons/Sav-On Pharmacy locations and outpatient facilities. For referral to a MemorialCare Medical Group physician or for more information, visit [memorialcare.org/MedicalGroup](http://memorialcare.org/MedicalGroup) or call 1.866.276.3627.

## Creating a Culture that Supports Retention

Top talent, no matter the discipline or industry, is difficult to find and keep. Your employees today could be someone else's candidates tomorrow. Don't take them for granted, especially the employees who impact your bottom line, connect with your customers and affect your overall business goals. Below are ways to identify your key employees and suggestions for motivating them as you build a culture that supports retention:

### Five Characteristics of Key Employees

- Integral to the Team:** Beyond just "playing well with others," these employees take joint ownership in setting personal and team goals.
- Initiates Actively:** There is no waiting for direction here. When change needs to happen, action is taken and suggestions made for improvement.
- Possesses Integrity:** Leadership can rely on receiving the truth and coworkers needn't worry about being undermined. They make the right choice and put their personal agendas aside for the greater good of the organization.
- Committed:** Also called "belief in the cause," the outcome of commitment is unity. These employees encourage involvement from others with their unflinching vision and determination.
- Always Improving:** Opportunities are sought for improvement and solutions proposed. They watch others to see what is working and adapt those techniques to their own positions. They choose career paths built on their own abilities and then tie those paths to the company's trajectory.

### Four Cornerstones for Creating a Dynamic Culture

The opposite of "dynamic" is boring and inactive. We don't want that in our personal lives, and we certainly don't want it at work. This is particularly true for your most talented employees whose very makeup requires they keep thinking, changing and growing. Like a building with cornerstones, these tips sit on a solid foundation of Vision, Communication, Trust and Reward.



#### Vision

- ◆ Share the full perspective (the big picture) with employees – from the company, to the customers, to the employees, to the competition – and communicate the organization's direction with passion. The enthusiasm will be infectious as employees learn where the company is going and how each individual fits into the large plan.

#### Communication

- ◆ Communicate in all directions: up, down and sideways. There is almost no such thing as too much communication.

#### Trust

- ◆ Squelch bureaucracy and red tape whenever possible. Trust your strong players to do the right thing so they don't feel as if they're under a microscope.

#### Rewards

- ◆ Offer as much autonomy and flexibility as possible. Work and personal life are probably quite blended when it comes to your motivated workers. (It's a sure sign if they are getting work emails on their iPhone or BlackBerry) Consider offering options like flex time, job sharing and/or telecommuting to offer flexibility.

We offer more tips and suggestions for identifying key employees and creating a dynamic culture in our **2012 Staffing/Salary Guide**. Call 949.862.6585 today to reserve your copy.



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# Where is Everybody? — Managing a Remote Workforce

by Kathi Guiney, President, YES! Your Human Resources Solution

**A**s business expands globally it is the “new” normal to have work teams broadly dispersed. As a manager you may have staff located everywhere from Ireland to India to Indianapolis. To successfully manage remote employees it requires building a triangle of the right manager, the right employees and the right communication techniques.

The first side of the triangle is a manager who is gifted in making and maintaining connections and delivers concise, meaningful messages. Lacking the ability to give a pat on the back or a cheery good morning, this manager knows how to use email, texting and the phone to demonstrate personal interest and openness. Openness is critical if remote employees, lacking visual clues, are to feel confident to reach out for clarification on assignments or assistance in meeting deadlines.

The ability to hold people accountable is critical, and managers of remote workers must be able to clearly set expectations, establish realistic milestones and rigorously follow up on progress. All without any in-person contact!

The successful manager of remote workers will be passionate and positive about the company and its mission. They will be sensitive to time and cultural differences when scheduling calls. An 8AM call in California will exclude an employee in Asia where it is 11PM and don't forget holidays are different around the world! The manager will use email and intranet tools to creatively recognize team members and ensure their accomplishments come to the



attention of other members of the team. There isn't room for sarcasm or negativity, which will be amplified without the in-person contact, and will fester and grow in the remote environment.

The next side of the triangle is the employee. It may seem counterintuitive but careful selection of outgoing, proactive and focused employees is key. Loners, ruminators and quiet types get lost and tuned out in the remote workplace. Remote workers need to be able to keep themselves motivated, energized and have the desire and skills to reach out to others on a regular basis and do their part to stay connected and interested.

We complete the triangle with techniques that compensate for the lack of “eyeball-to-eyeball” interaction. Start the day off with a brief – no more than ten minute – conference call. Use carefully crafted open-ended questions. “What’s happening?” is not going to open up the right kind of discussion in a virtual meeting. Focused questions – “What is working?” “What’s not?” “What do you need from me?” “What’s on your plate today?” will

help the employees feel connected and give the manager a clear status update.

Celebrate successes of the team and of the individuals. Weekly recognition of a job well done within the team and regular communication with the rest of the organization will promote a feeling of visibility. Don't let birthdays and anniversaries go unnoticed. Be sure remote-based employees are invited to hear, or participate via tools like web-x, all company update meetings and important announcements.

Rotate ownership of the conference calls among the team. Assign projects that require the remote workers to reach out to each other and to co-workers in other teams. Change it up – variety is good thing!

Take advantage of electronic tools such as *Google Docs*, *Microsoft* and *37Signals* to track and share progress.

With all three sides of the triangle in place – your remote team is as close as the next room and positioned for success!



## ANNUAL EMPLOYMENT AND LABOR LAW SEMINAR

**INFORMATION YOU NEED... IT'S WORTH YOUR TIME!**

**WEDNESDAY, FEBRUARY 1st**

8:00 am Registration, 8:30 - 10:00 am Program | Full Breakfast Included | Hosted Valet and Self Parking  
The Balboa Bay Club & Resort, 1221 West Coast Hwy, Newport Beach, CA 92663

**SAVE THE DATE! RSVP by January 26**

Dana Ross at 714.641.5100 x1311 or [dross@rutan.com](mailto:dross@rutan.com) or register online at [rutan.com](http://rutan.com)

### SPEAKERS

**MARK BUDENSIEK** | Partner

Mr. Budensiek is a partner in the firm's Employment Law Department where his educational background in Human Resources Management and broad career experience give him a unique perspective on the practice of employment law. With over a decade of employment law practice, both as in-house employment counsel for a major health care manufacturing company and as a counselor to employers in private practice, Mr. Budensiek brings a thorough understanding of the employment relationship to his work with company management and with individual senior executives.

**SHAWN LARSEN** | Partner

Mr. Larsen is a partner in the firm's Employment Law Department. Mr. Larsen represents and counsels employers in all areas of employment law including harassment, workplace discrimination, terminations, employment agreements, leaves of absence, wage and hour issues, trade secrets, accommodating disabilities, and employment policies and procedures. Mr. Larsen litigates matters in both federal and state courts and before various administrative agencies and has extensive experience advising and representing businesses on matters involving state and federal public accommodation access laws.

**SUMMER YOUNG AGRIESTI** | Sr. Associate

Ms. Agriesti is an associate in the firm's Employment Law Department where she represents employers in labor and employment-related litigation, including individual and class action “wage and hour” litigation, wrongful termination, employment discrimination, sexual harassment, unfair competition and trade secret misappropriation. Ms. Agriesti also defends employers before various state and federal administrative agencies, including the California Department of Fair Employment and Housing (FEHA), the federal Equal Employment Opportunity Commission (EEOC), and the Division of Labor Standards Enforcement (DLSE).

### Kathi Guiney

YES! Your Human Resources Solution: Kathi Guiney SPHR, GPHR leverages HR expertise to create customized and practical HR solutions that drive results for small to mid-sized companies. For more information contact Kathi at 949-212-8788 [Kathi@yeshrsolution.com](mailto:Kathi@yeshrsolution.com) or visit <http://www.visualcv.com/kathiguiney>.



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# CALLAHAN & BLAINE

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## A Pragmatic Approach to Resolving Employment Lawsuits: A Guide For Businesses

By Daniel J. Callahan, Managing Partner and Edward Susolik, Partner in Charge, Callahan & Blaine

**O**range County businesses have been hit with an avalanche of employment and wrongful termination lawsuits since the recession began in 2008. This article will provide some practical advice and pragmatic solutions for businesses affected by this litigation epidemic.

### 1. Background of Employment Litigation Problem

The cycle is simple. Because of the bad economy, a company is forced to lay off some of its workforce. No wrongful intent is involved; it is a difficult, but necessary business decision. These laid-off employees are unable to find new jobs. As a consequence, they become plaintiffs, coming up with some pretext for being laid off and filing wrongful termination lawsuits against their former employers.

It is a classic case of a double jolt of bad news: a company already suffering from the economic downturn now has to deal with expensive litigation.

The crisis has become an epidemic. Based on new case filing reports from Orange County, at least 10 to 15 new employment-related lawsuits are filed every week in Orange County Superior Court. It is certain that the large majority of these cases are meritless. Nevertheless, these cases will linger in the court system, usually for at least a year. Typically they are settled on the eve of trial, as neither side wants to go through an extended trial. By that time, however, the company has frequently spent huge amounts of money on its defense.

Further exacerbating the problem, many employment lawsuits being filed today are denominated as purported class actions. Class-action employment lawsuits seek redress for alleged violations of various technical requirements for employers, such as overtime, lunch and rest breaks, vacation pay, record-keeping and general employment related practices.

Unfortunately, lawsuits filed as a purported class action become classified as "complex" and are exempt from normal judicial management timelines that require most cases to go to trial within approximately one year. Thus, these class action cases can take many years to work through the litigation process. Further, the discovery, depositions and motions that relate to the process of class action certification can be extremely time consuming and expensive, not to mention highly invasive for businesses being sued.

### 2. Pragmatic Solutions For Dealing With Employment Litigation

#### A. Conducting Due Diligence of Plaintiff's Case: An Objective Analysis

The first step in properly dealing with employment litigation is to conduct an extensive factual analysis of the Plaintiff's claim. Because the first few months of litigation may not have much activity, many companies back-burner the hard decisions that need to be made in a short-sighted attempt to save money. Conversely, many companies will adopt a knee-jerk, scorched earth approach to being sued.

Neither approach is advisable or prudent. Rather, a company should conduct a systematic due diligence of the Plaintiff's claims, looking at the potential exposure in an objective, big-picture manner. In fact, forming a litigation committee may be most advisable.

It is very important to gather all documents, especially e-mails, and systematically analyze the "paper trail" which may expose a company to liability. It is also important to interview all potential witnesses, especially the supervisors and managers who had the most contact with the Plaintiff.

A company and its counsel must look at what potential witnesses the Plaintiff may try to recruit to support their position. For example, if a friend of the Plaintiff has also been laid off, that person may be adverse to the company, even if they are not a plaintiff themselves.

After conducting this objective due diligence, a company should make a reasoned decision whether it should seek settlement and at what cost. The ultimate decision is based in large part on defense costs: instead of spending huge amounts on attorney's fees before discussing settlement, why not use that money to resolve the matter. Successfully managing an employment lawsuit is a business decision that should be handled like all others, based on an informed cost benefit analysis.

#### B. Look at the Lawsuit From Plaintiff's Perspective

Part of any pragmatic approach to defending employment and class action matters is to look at the Plaintiff's perspective. This approach is rooted in a real understanding of that the Plaintiff's law firm actually wants and would accept to settle the matter. Such an analysis allows the defendant to assess the merits and cost of a case and if the case has some merit, avoid prolonging the case and paying more as a result.

Much of the responsibility for this analysis falls on defense counsel. Ultimately, defense counsel is the steward of its clients' money. It is counsel's responsibility to advise its client when continued litigation of the case will not yield a lower settlement. Non-productive litigation by defense counsel simply drives up the cost of settlement, especially in class action matters, where the defendant, if liable, must pay the counsel that represents the class.

Accordingly, it is a significant advantage to have defense counsel advising the client who has both plaintiff and defense experience. For example, Callahan & Blaine has successfully handled hundreds of employment and class action lawsuits in both the plaintiff and defense sides. Thus,

the firm's ability to understand the milestones of an employment cases are based on the fact that it has actually represented plaintiffs in employment and class action cases. This has given Callahan & Blaine a unique perspective on how the traditional "big firm solution," to grind down the other side, is of little or no value.

#### C. One Client's Perspective on Early Settlement of Class Action Litigation

Many corporations are already veterans of the employment class action wars. Once a company has been through the mill a few times, it gets a different perspective. Here is one representative client's perspective:

**"I only wish I had understood from the beginning what the key milestones are in the litigation of a class action. I feel like the firm which represented us in the past basically spent a million dollars and then said it is "now time to settle." We eventually resolved the matter in mediation for \$1.7 million, however, it later became clear that the plaintiffs' counsel would have taken the same deal before we spent our first \$250,000 in litigations costs. The defense tactic that our counsel chose delayed resolution, and drove up the plaintiffs' attorney fees which ultimately we had to pay for under the employment laws."**

Many defense firms try to create the impression that class actions are complicated and require significant lawyer time to narrow the issues. This is frequently not accurate. The proper approach is for the defense counsel to take the responsibility to demystify the employment and class action case so that the client can understand why counsel suggests certain actions early in the case. In this manner, the client can make intelligent business decisions regarding proper handling of the case.

#### D. Preparing For a Rainy Day: Insurance Issues

In today's hyper-litigious times, companies are well-served by purchasing full and comprehensive insurance coverage. In the employment area, this requires the purchase of Employment Practices Liability Coverage, at a minimum.

However, it is also important to understand that through a variety of insurance rules and principles, general liability insurance policies also provide coverage for an incredibly broad variety of employment lawsuits. The reality is that general liability policies can potentially provide coverage for virtually every type of commercial litigation lawsuit, through coverages such as advertising injury and personal injury. These include business litigation business lawsuits that center on allegations typically not covered by general liability policies – such as breach of contract, partnership disputes and employment lawsuits – that nevertheless frequently involve secondary allegations of defamation, disparagement, invasion of privacy or related torts which do implicate insurance coverage. See *Buss v. Transamerica* (1997) 16 Cal.4th 35.

### 3. Conclusion

Successfully managing an employment lawsuit is a business decision that should be handled like all others, based on an informed cost benefit analysis. Defense counsel must be a partner in this process, including preparation of an objective, due diligence analysis of the case at the beginning of the lawsuit.

#### Daniel J. Callahan

Daniel J. Callahan is the managing partner and founder of the Santa Ana-based law firm, Callahan & Blaine. Mr. Callahan specializes in complex business litigation, including employment and class action matters. Mr. Callahan recently obtained a unanimous defense verdict on behalf of one of Orange County's largest companies in a two-month long employment discrimination jury trial. Mr. Callahan has also obtained the largest jury verdict in the history of Orange County, a \$934 million verdict on behalf of Beckman Coulter in a complex business litigation case.

Among his many accolades and accomplishments, Mr. Callahan has been named one of the "Top Ten Attorneys" in the United States by National Law Journal and "California Business Trial of the Year" by California Lawyer. Mr. Callahan can be reached at 714.241.4444 or dan@callahan-law.com.



#### Edward Susolik

Edward Susolik is the partner in charge of the Insurance Department at Callahan & Blaine, an Orange County boutique litigation firm with 28 attorneys. Mr. Susolik is an adjunct professor at USC Law School, and has been an editor of the *Rutter Guide on Insurance Litigation* since 2003. Mr. Susolik has been named one of the "Top 100 Attorneys in Southern California" by *Super Lawyers* for 2010, 2011 and 2012, and one of the "Top 50 Attorneys in Orange County" for every year since 2005. He can be reached at esusolik@callahan-law.com or 714.241.4444. Callahan & Blaine's website is found at www.callahan-law.com.



# The Benefits of Utilizing a “Specialty” Staffing Company

by Charlene Nichols, President/CEO, Loan Administration Network Inc. (LANI)

**W**hat is a “specialty” staffing company? It’s a company that provides staffing in a specialized field that requires a high degree of technical expertise. The staffing company is considered an expert in this field of specialization. It’s what the company does best, what they are known for and what they have been doing consistently for years.

For example, a staffing company that is accustomed to providing general clerical services to a multitude of industries may not have the expertise to provide experienced loan administrators that manage multi-million loan portfolios. To obtain this expertise, you may need the help of a “specialty” staffing company.

What are the benefits of utilizing a “specialty” staffing company?

◆ **Specialty Recruiters Save You Time**

Specialty recruiters understand your job openings, as they have worked in your industry. They talk your language.

◆ **Better Quality Candidates**

The “specialty” staffing company’s database is focused on specialty positions for your specific industry. Specialty recruiters have built a pool of passive and active candidates and maintain a network with these candidates so they can provide you the best quality candidates.

◆ **Faster Response Time**

The “specialty” staffing company’s search process is focused on your specific industry. They



Charlene Nichols

**Charlene Nichols**

Charlene Nichols is the founder, president/CEO of Loan Administration Network Inc. (LANI). She has authored 10 books on Administering Commercial Real Estate and Construction Loans. LANI is a “specialty” staffing company, providing staffing, training and consulting services to the finance industry (banks, mortgage, title/escrow, credit unions) in the areas of credit, documentation, audit, loan servicing, operations and accounting. LANI is certified as a WBE (Women Business Enterprise). Charlene can be reached at charlene\_nichols@lani.com or 888.588.5264.

don’t try to be everything to everybody.

◆ **Increased Productivity and Value**

Because their focus is in your industry, utilizing “specialty” staffing companies gives you access to qualified candidates that can step in and immediately perform, helping you achieve your production goals.

◆ **Diversity Certified**

The “specialty” staffing company may be certified as a woman-owned business (WBE) and/or a minority owned business (MBE), contributing to your diversity objectives.

◆ **Specialty Services**

In addition to providing an array of staffing services (temporary, temp-to-hire, contract, direct hire and payrolling), the “specialty” staffing company often offers specialized training and consulting services for your specific industry and their candidates, raising the level of expertise within your organization.

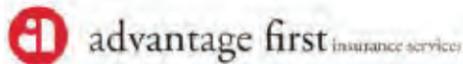
Specialty Recruiters = More In-Depth Industry Knowledge = Better Qualified Candidates



## Personalized Employee Benefits Do Not Need To Be a Thing of the Past

**T**ypically, a company’s employee benefit costs account for 30 percent of their payroll costs. And, that number has been on the rise! Given the business environment that we find ourselves in today, and likely in the future, it’s time to take on this critical issue.

With premiums increasing 13 to 15 percent, on average, over the last five years, many employers feel that



medical carriers have taken advantage of both employers and employees. As a result, many employers have had to lower their medical coverage, while raising co-pays and deductibles and making employees responsible for a larger portion of the premium. Although these practices are now very common, they strike at the heart of the basic premise of “Employee Benefits” – to attract and retain good employees. Even with these types of cost-reduction strategies in place, many employers still end up paying more for benefits, and therefore dealing with dissatisfied employees.

To add to the challenges employers face, many local firms specializing in employee benefits have been swept up in a buying frenzy by large, national insurance brokerage firms. The shift to larger firms means, in many cases, that employers who previously used smaller firms will now be serviced by large firms that often see them as a number, rather than a client with whom they have a relationship. The directors of these smaller, purchased firms, prior to their company’s buyout, had a personal, vested interest in providing focused services to each and every client. However, with larger brokerage firms, the focus is an account representative approach. This shift has resulted in firms that are less motivated to do all they can to find their client the best possible price and benefits program for their specific needs.

With the recent purchase of Monarch Health Care IPA (in South Orange County) by United Healthcare, the company has positioned itself as an ACO (Accountable Care Organization). Under an ACO format, employers must re-evaluate their medical contracts on a daily basis, based on each new development coming out of Obama Care. Other carriers have and will most likely continue to follow in this direction – acquiring more and more medical groups. How will this affect your benefits program?

This is a time in which Orange County businesses need a more focused approach with personalized brokerage services that will help them stay on top of new developments and get the best possible plan for the best possible price.

The ever-changing medical marketplace may have better benefits and prices available, but you need to be aware of them. When you are, you can make a real difference for both your company and employees. Advantage First Insurance is a firm that specializes in employee benefits, with not only, proprietary benefit options found nowhere else, but team members who are committed to the interests of our clients. Yes, the world is changing, but we are committed to finding the right solutions and setting you on a path that best meets your individual needs.

For more information, and a no-cost consultative review, please contact Joan Gilbert, NBD at 949.633.8241 or joan.g@advantagefirstinsurance.com.

## BRISTOL PARK MEDICAL GROUP is now MEMORIALCARE MEDICAL GROUP

During fall open enrollment, look for us also under our new name – MemorialCare Medical Group, a proud member of MemorialCare Health System. We accept most major HMO, PPO, EPO health plans including: **Anthem Blue Cross, Blue Shield, Medicare and Medicare Advantage Plans.**

For a complete list of accepted plans call **866.276.3627**, or visit [www.memorialcare.org/medicalgroup](http://www.memorialcare.org/medicalgroup).



New name. Same great care.

MemorialCare Medical Group provides medical care exclusively for MemorialCare Medical Foundation.

# Learning to Live with Social Networking Sites in Your Workplace

by Shawn Larsen, Partner, Rutan & Tucker

**E**ven if you don't have an on-line presence, chances are that one (but likely a lot more) of your employees does. A recent study found that, as of June 2011, Facebook had over 750 million users. To put that number in perspective, if Facebook were its own country, it would be the third most populous nation in the world, behind only China and India! (The United States, at approximately 310 million, would rank a distant fourth).

Social networking services – defined as any on-line site or platform that allows users to build relationships or “networks” amongst themselves – are exploding. These on-line communities allow users to share ideas, interests and opinions to an audience of their choosing. Their popularity is not limited to high school students: more and more adults are logging on to do everything from join a political discussion with like-minded friends to check in with an old college roommate. The most popular and well-known among these are (1) Facebook, a service where users create a personal profile or “wall” to which they can post messages, web links and photos; (2) Twitter (over 380 million users), a microblogging service through which users send posts (or “tweets”) of up to 140 characters; and (3) LinkedIn (over 120 million users), a business-related service which allows users to share information regarding their professional endeavors.

Not surprisingly, as these sites have attracted an increasing number of users, they have crept into workplaces. As more employees access these services, both in and out of the workplace, employers face a new set of risks, including the following example:

**Sexual Harassment:** Written policies barring harassing comments and interactions in the workplace have become standard fare. Supervisors and managers now routinely deal with complaints and investigations about such incidents. Social networking services, however, provide new channels through which an employee can harass a colleague. So, while a male supervisor may not make a single lewd remark or cast an unwanted glare at a female subordinate at the office, he may still open his employer up to harassment liability through on-line postings and “tweets.”

**Trade Secrets:** Nearly every employer has information that it considers to be a trade secret or otherwise proprietary to the company. Employers generally take several measures, and spend precious financial resources, to keep this information confidential. Such measures may include written employment agreements and conditioning access to company computer systems on the entry of a unique password. All of these efforts may be undone, either purposefully or unwittingly, by an employee who posts the information on a social network-

ing site. It is not hard to imagine, for example, an excited salesperson “tweeting” about the new client account he just landed. By making this otherwise private information public, the employee may have undermined any argument his employer may later make about it meriting confidentiality. Beyond legal issues, such information may provide your competitors with information you would rather they not have.

**Disparagement:** It is an unfortunate fact that on-line activity often brings out the worst in some people. As a result, many employees use their Facebook page as a soap box from which to raise complaints and make disparaging comments about their employer, their supervisor or their colleagues.

Faced with these concerns, employers across the country are all asking the same question: What can we do to reduce our risks and avoid the possibility of liability resulting from an employee's use of social networking sites? There are at least three answers to consider:

◆ **First**, employers can adopt a “head in the sand” approach. Rather than take proactive steps to confront potential problems, employers may do nothing, and allow

their employees free reign to access and participate on social networking sites without any limitations whatsoever. In this scenario, employees could use office computers to update their Facebook pages and send “tweets” during work time without any oversight. Employees certainly will appreciate the unlimited freedom granted to them, which may be of some short-term benefit to the employer. In the long term, however, fostering a “Wild West” cyber-atmosphere ultimately leaves employers vulnerable to, and unprepared to defend against, the many risks described above.

◆ **Second**, employers may take the exact opposite approach by enacting a written policy barring employees from accessing social networking sites during work hours and/or using office technology. Such an “across the board” policy would appear to garner employers the most bang for their proverbial buck; if we keep employees off these sites altogether, the argument goes, we eliminate all of the accompanying risk. Unfortunately, the underlying technology and its inherent problems defy simplistic resolutions. As a practical matter, employers cannot prohibit or prevent employees from accessing social networking sites throughout the day on their personal smart phones. At the same time, as described above, employers remain vulnerable to potential liability stemming from an employee's off-hour on-line activity.

◆ **Third**, employers, working with their legal counsel, may adopt a written social networking policy that places reasonable limits on employee activities. If crafted thoughtfully, such a policy offers a mutually-agreeable balance: employees are able to access their favorite social networking sites, while employers receive a level of protection they would not otherwise enjoy. Employers considering such a policy should keep in mind the following guidelines:

- The policy should make clear that employees may not use social networking sites at any time for commentary that may violate the employer's anti-harassment and anti-discrimination policies. To ensure consistency, the policy also should inform employees that their misuse of social networking sites in this manner will subject them to the same disciplinary procedures as would any other instance of harassment or discrimination.

- It should prohibit employees from sharing information that the employer considers to be confidential or proprietary to its business. Again, employees should be informed that their posting of such information could subject them to discipline.

- It should state in plain language that employees are solely responsible for their own on-line comments. They are not to state, infer or otherwise give the impression that they are speaking on behalf of the employer when they participate in on-line social networking activities.

- Employers may want to advise employees that they are permitted to use social networking sites **only during their meal and rest breaks**. Such a requirement, however, could be read to obligate an employer to keep track of employee use. A less onerous alternative is implementation of a generalized rule that employees must dedicate their working time to their job duties, and that they may not use social networking sites (or any other website, for that matter) in any way that would keep them from fulfilling those duties.

Once a written policy is in place, employers must ensure that it is distributed to all employees. Even more importantly, employers should then adopt workplace practices designed to ensure compliance with the policy. Supervisors and managers should be trained to deal with these issues, and must be consistent in taking disciplinary action against violating employees.

In most circumstances, implementation of a comprehensive, well-developed social networking policy is the most sensible approach for employers. To be clear, even the best written policy is not a panacea; employers can never wholly eliminate the possibility that an errant supervisor is going to log on to his Facebook account one afternoon and post harassing comments on the “wall” of one of his female subordinates. A policy and guidance from legal counsel, however, can provide employers with increased peace of mind. That is something every employer can “live with.”





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