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Managing Employee Speech in the Age of Social Media

By George Brandon

Balancing autonomy, ethics, and reputation in today's digital workplace

In December 2024, a global law firm removed one of its Australian partners from the partnership after he posted offensive comments on X (formerly Twitter). The partner criticized how a Jewish lawyer at another firm responded to an arson attack on a Melbourne synagogue. The remarks were condemned both inside and outside the legal community. Following an internal review, the firm acted swiftly to sever ties, emphasizing its commitment to inclusivity and ethical conduct.

This incident serves as a stark reminder of the reputational risks law firms face in the social media age. Today, the line between personal expression and professional identity is increasingly blurred. Lawyers, paralegals, and even administrative staff are active online and what they post can become a reflection of their employer's brand. One moment of poor judgment can lead to public backlash, client loss, or even professional discipline.

The Legal Framework: What's Protected and What's Not

Contrary to popular belief, the First Amendment does not protect private-sector employees like law firm staff from consequences related to their speech. Firms may set policies that regulate how employees represent themselves in public, especially when reputational harm is at stake.

That said, federal and state laws provide important boundaries. Under the National Labor Relations Act (NLRA), employees are protected when they engage in "concerted activity", which includes online discussions about working conditions or pay. Disciplining an employee for such posts could expose a firm to liability.

Several states—including California, New York, and Colorado—go further by prohibiting employers from taking adverse action based on lawful off-duty conduct, including some forms of social media expression. In Utah, for example, a former in-house counsel filed suit after being terminated for posting comments critical of an LGBTQ nonprofit. He argued the firing violated both Title VII and state speech protections.

In addition, attorneys remain bound by professional conduct rules. State bar associations regulate public statements, advertising, and confidentiality regardless of platform. Even a tweet or post that seems harmless can breach ethics rules if it references client matters, misstates qualifications, or appears to offer legal advice.

The Real Risk: Reputation

While legal protection exists, the greater threat is reputational. Clients may question whether a lawyer's post reflects firm values. Business partners may seek distance. Journalists and watchdogs often seize on such moments to paint a firm as negligent or inconsistent.

Consider the 2015 example of UK-based law firm, a niche firm providing advice to public bodies, including schools and local authorities. The firm lost multiple contracts after a lawyer posted flippant tweets about cases involving disabled children. It was reported that the firm lost approximately half of the 20 government entities represented in special education cases. Or the more recent example of a U.S. associate whose criticism of a DEI initiative caused backlash both internally and externally.

Reputation damage isn't always external. Internally, staff may feel alienated if offensive or insensitive posts are left unaddressed. Morale and trust can quickly deteriorate if a firm is perceived as tolerating harmful expression.

Building a Thoughtful Policy

A clear, comprehensive social media policy is a firm's first line of defense. It should articulate expectations while respecting employees' rights to personal expression.

Key elements include:

- **Confidentiality standards:** No discussion of clients, cases, or internal matters.
- **Personal disclaimers:** Encouraged for posts on legal topics or social commentary.
- **Civility and respect:** Explicit prohibitions on hate speech, harassment, and discrimination.
- **Process for clarification:** Channels for employees to ask compliance-related questions before posting.

A policy alone isn't enough. Regular training helps staff understand the nuances of what is permissible, what is risky, and when to seek guidance. Real-life case studies, anonymized examples, and simulations can make abstract rules concrete.

A Culture of Dialog, Not Discipline

Younger professionals, especially digital natives, often value authentic expression. Firms that rely solely on rigid enforcement risk alienating talent or appearing disconnected from modern communication norms.

The goal should be education and alignment, not suppression. Create open spaces for discussion. Establish internal review groups or Slack channels where employees can vet planned posts. Recognize and reward employees who model thoughtful engagement online.

Crisis Response: When Things Go Wrong

Even with preparation, mistakes will happen. A fast, transparent response is critical.

1. **Acknowledge the issue** internally—and, if needed, externally.
2. **Investigate promptly**, fairly, and in proportion to the offense.
3. **Engage stakeholders**, especially clients who may be impacted.
4. **Take corrective action** that reflects firm values, whether through training, a public statement, or separation.

A well-handled incident can strengthen a firm's reputation, demonstrating accountability and leadership.

Looking Forward

As technology advances and generational norms evolve, law firms must remain agile. Deepfakes, AI-generated content, and viral misinformation will introduce new challenges. But the core principles remain constant: foster a culture of integrity, define clear expectations, and act decisively when those expectations are breached.

Employee speech doesn't need to be feared; it needs to be managed with wisdom. Firms that strike the right balance will earn trust, retain top talent, and safeguard their standing in a fast-moving digital world.

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