



Blogging Your Way Out of a Job

by Chere B. Estrin, Ph.D.

The Internet. E-Mail. Webcams. And now <drum roll please>, Blogging. This current evolution of technology has caused the world's workplace to fire employees for actions never before heard of, much less thought about.

This new phenomenon of communicating with the world via an Internet "diary" brings people closer to each other. People who otherwise might never have "met". This faceless, voiceless communication encourages otherwise closed-mouth individuals to literally spill their guts about the most private matters to absolute strangers. Why, you may ask, would anyone do such a thing? Probably the best answer is the need for emotional support, approval and attention. The need to reach out to others is so great in today's society that people are willing to open up to invite the support they might not otherwise get on the job.

However, when you use this new tool as a support mechanism to tell the world about your workplace woes or to involve your employer in anyway whatsoever, you can invite a whole host of problems. Sometimes, it might even come down to actions that don't involve the employer directly but represents them in some fashion. Take, for instance, the Delta Air Lines flight attendant

who claims she was fired over pictures she posted on her personal blog that she says the airline deemed "inappropriate."

Private thoughts about your employer are no less threatening. Friendster, an online social networking site, canned an employee last summer for her online musings about the company. And beware of violating trade secrets! A Microsoft contractor lost his gig after posting on the Web photos of Apple computers arriving at the software giant's Redmond, Wash., headquarters. Lordy, Lordy, Lordy....

Employee blogging is on the rise, sparking increasing clashes between workers and management over the line between appropriate and inappropriate commentary. Although blogs were originally created as a means for individual expression, it has evolved into much more. Article after article claims blogs can be used as an effective marketing tool, not just as a means of self-expression. Businesses now use them as a tool to educate potential customers about their products and services. *Business Week* recently featured business blogging as its cover story citing Fortune 500 companies that effectively use this new advertising tool.

While blogging can be used as an inexpensive, successful marketing campaign, there are blogs that aren't as well meaning. In recent months, Apple Computer has launched legal attacks against operators of at least three Internet sites — not run by Apple employees — that allegedly posted or linked to information that the Cupertino, California, maker of the iPod portable music player claims is proprietary.

In one blog I reviewed, Cliff Palefsky, a San Francisco employment lawyer, stated there's a false sense that employers can't punish their workers for voicing personal opinions -- on their blogs or anywhere else. "People mistakenly believe that the First Amendment protects them in the workplace, which is generally not the case," he said.

It seems as though blogging would be the perfect vehicle to vent your frustrations and get some peer support. But hold on, there, fella! If you are at all considering creating a blog, and particularly if you are in a law firm or in-house legal department, you need to hold blogging in the same regard as speaking to the media or violating client confidentiality. Either fortunately or unfortunately, the legal environment set a precedent for blabbing with a website called "Greedy Associates." It allows associates, primarily from major firms, to share anonymous salary information and opinions about the quality of law practice and life in their firms. If anyone has checked it recently, there also appears to be some kind of hate festivity with childlike barbs aimed at each other. (So much for the consequences of stress in a law firm.)

But, back to blogging. Listservs, of which there are several for paralegals and legal professionals, allow you to vent only to the number of listserv members. And while you still run the chance of your words getting back to the firm, you might be somewhat disguised with a *nom de plum* or fake email address. However, when you blog something, it becomes open to the world. Therefore, if you are planning on writing a blog, bear in mind that the world is your audience. If you are about to write something you would not want repeated to your supervising attorney, you probably should not blog it.

Because the world of blogging is pretty new, many firms may not have strategies in place for employees who mention their firm or corporate legal department in a blog. If you have doubts about a certain workplace issue on your blog, it's very simple: don't write it. And for heaven's sake, if you write about a case or matter that you're working on, you should have your fingers permanently glued together.

I've witnessed how blogs can clog up billable time. Apparently, some employees feel it is their inherent right to contribute to blogs on their employer's time. Take a look at some of the Listservs: Have you noticed how some paralegals contribute as many as 10 or 20 postings a day, not to mention what they are contributing to blogs? Instead of thinking that these law firm employees are knowledgeable, I get just the opposite impression: I wonder how much work they do, if any, all day long.

In most states, employees who don't have a contract are considered "at-will," which means they can quit at any time and for any reason. Conversely, employers have the right to fire them at any time and for any reason, except for well-known exceptions like race, age or gender.

Whether a supervisor discovers an underling ridiculing his recent weight gain at the company elevator bank, at a local bar after work, or on the worker's personal blog doesn't matter. In either instance, the boss can turn around and say, "I don't think you are a fit on our team. Why don't you work for someone else?" and legitimately get away with it.

But revealing internal secrets about your law firm in public is now and has always been a foolish thing to do for which you can generally be summarily dismissed. Many law firms and corporate legal departments already forbid

employees to talk to journalists about work matters: and the blog is the most efficient way of informing every hack in the world how you feel. Don't look for the journalistic ethic of protecting sources to apply here. It's unlikely bloggers will want to offer the same protection. Law firms are not democracies: freedom of speech might be your natural right, but so is a firm's freedom to show you the door.

As anyone who has worked on violation of trade secret cases knows, once the cat is out of the bag and the information has been disclosed, it can't be undisclosed. Your job, as a legal professional, is most definitely at risk if you step over the line. Most employees want to support their firm and make it successful. Come'on, it's really *much* better to error on the side of conservatively disseminating innocuous information than violating confidentiality while using raging fingers.

If your firm does not have policies in place regarding blogs, you might want to bring it to the HR Administrator or Practice Support Director's attention. If nothing else, here's a great way to get a little recognition for initiating a new risk management policy that can save you and your firm from a whole lot of headaches.

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