

# MANAGEMENT COUNSEL

Employment and Labour Law Update



## Blogging And The Workplace: The Good, the Bad and the Ugly

"Getting to surf the web for 3 hours while being paid: Priceless.  
Getting to blog for 3 hours while being paid: Priceless.  
Sitting around doing nothing for 3 hours while being paid: Priceless.  
Installing Windows 2000 Server on a P2 300: Bloody  
Freaking Priceless."

*- Blog entry that resulted in the termination of  
Manitoba Health system administrator Jeremy Wright*

**Blog:** A short form for "web log" - a regularly updated online journal of information and opinions.

**Dooced:** The act of having been terminated for blogging about one's workplace.

### THE "BLOG"

In the beginning - circa 1994 - the phenomenon now known as blogging was little more than the sometimes nutty, sometimes inspired writing of online diaries. These days there are blogs about almost any subject including: technology, sex, business, music, sports, news and, of course, the workplace. Blog sites are often packed with links, quips, ideas and arguments that only months ago were the near monopoly of established corporate news outlets. In Canada alone, it is estimated that more than 250,000 people maintain some type of blog.

Regardless of the topic, all blogs share two fundamental characteristics. First, they are personal. Second, unlike traditional journalism, blogging seizes the means of production. For as long as journalism has existed, writers have had one route to readers - through an editor and a publisher. Even in the most benign scenario, this process subtly distorts journalism. Blogging bypasses this ancient ritual, and as such, may well be journalism at its purest and free-speech at its best.

### WORKPLACE BLOGGING

It's inevitable - your employees will blog with or without your permission. Although you could clamp down and forbid personal blogs outright, you probably cannot stop them - employees will likely start to post the same comments in an anonymous blog. As such, workplace blogging is in 2005 what email was in the early 1990s - an unbridled form of workplace communication that, while potentially very useful, can create considerable risk to you the employer.

#### The Good

At its best, workplace blogging can be a most effective and inexpensive means of direct advertising. Good quality blogging raises a company's visibility and profile and has the potential to reach millions of readers. From the standpoint of a prospective employee a good blog can also provide a unique perspective on

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what it's like to work for the company about which the blog was created. Sun Microsystems knows this benefit well and has dedicated an entire portion of its website to blogs written by its employees. Indeed, functional areas such as employee recruitment are a good, non-controversial place to workplace blog. For example, a recruiter at Microsoft maintains a blog where she discusses topics including what the company looks for when hiring for certain positions.

*“...the most prudent approach may be to make the best of this new and rapidly growing technology, and encourage and regulate good workplace blogging.”*

#### The Bad

What, then, is all the hysteria about the blog?

In a word blogs can be dangerous. Left unregulated and unmonitored, blogs are devoid of any form of external check or balance. As a result, blogs often claim as fact that which is little more than opinion or speculation. They can also quickly turn into the worst example of the children's game "broken telephone". In the majority of circumstances, readers have no means, and no reason, to question the authenticity of the blogger's statements. As such, much like newspapers but - ironically in the current climate of media distrust - with an air of greater credibility and reliability, blogs can cause enormous damage in a relatively short period of time.

This is particularly true when the blog is a workplace blog. Disgruntled, disenfranchised, angry employees have much to say about their employers. Sometimes the information is accurate; often it is not. Many times it is misinformed or misconstrued and occasionally it contains confidential information. Often it

embarrasses or defames the employer.

- A Delta Air Lines flight attendant was fired after posting to her blog suggestive pictures of herself in a company uniform inside a company airplane.
- A former Google employee was terminated over a blog that discussed life at the company, including speculation about the company's finances.
- Last year Microsoft got a truckload of bad PR after firing an employee who posted a picture on his blog of Apple computers being delivered to Microsoft's Redmond campus - provoking much guffawing among the Mac community. Microsoft said it fired the employee for breaching a confidentiality agreement rather than the blog embarrassment factor.
- Recently, during the work stoppage at the Canadian Broadcasting Corporation (CBC), a number of employees maintained blogs attacking the employer and attempting to sway public opinion. The impact of these blogs was so profound that the CBC insisted that the Return to Work Protocol include a clause that read "...[the Union] will encourage...members to remove, as much as is possible, negative references and material related to the work stoppage from web sites, podcasts, blogging etc. consistent with the CBC and [Union's] accepted journalistic standards."

#### The Ugly

Although organizations are entitled to take appropriate steps to protect their assets, including their employees, the situation can become ugly very quickly when the employee's "right to free speech" appears to be under attack. In July of this year, telecommunications giant Telus came under fire when, during a strike of its workers, it blocked internet access (of Telus users) to two websites associated with the union. One site called on striking workers to jam customer service lines while the other posted pictures of Telus employees crossing picket lines to go to work. The company defended its actions as necessary to serve clients and protect the safety of its workers. Still, questions have been raised whether a private internet provider can arbitrarily and in an unaccountable manner simply shut off access to information. Indeed, Telus' unprecedented action continues to create ill-will toward the company.



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**WHAT CAN AN EMPLOYER DO?**

There is a range of options available depending upon the nature of the workplace. Some employers - usually those with highly classified workplace information - enact a hard "no blogging" rule. Anyone caught participating in blogging about the workplace, regardless of whether the blogging takes place on company time and with company property, will be terminated. At the other end of the spectrum are employers that have chosen to turn a blind eye.

Given the inevitability of workplace blogging, the most prudent approach may be to make the best of this new and rapidly growing technology and encourage and regulate "good workplace blogging" in the interest of the employee's right to speak and the employer's right to protect its assets.

What flows from this is the necessity for a workplace blogging guideline with disciplinary action or dismissal as the ultimate sanction.

**WORKPLACE BLOGGING - GUIDELINES**

Generally speaking, a good workplace blogging policy should achieve the following four objectives:

1. **Establish which rules are inviolable:** Respecting existing confidentiality agreements and company secrets is a no-brainer - and not doing so should be grounds for dismissal. Sun Microsystem's blogging system states simply "don't tell secrets" and asks employees to use common sense and to check with managers when they are unsure.
2. **Set expectations for when the employer will intervene:** There are certain times when you may need to curtail workplace blogging: for example, for regulatory, legal or productivity purposes. It is also reasonable for you to not allow or condone a blog in which employees express views that unduly or harshly criticize, demean or undermine management or even competing organizations.
3. **Monitor blog activity:** Because bad blogs travel just as quickly as good blogs, at a minimum employers should track what is being said about them. Sophisticated blog search engines allow organizations to identify and monitor blogs that discuss the organization and related topics. If requested, relevant blogs or postings can be delivered directly to management's desktops.
4. **Encourage good blogging:** If it is true that the best defence is a good offence, then management should be encouraged to blog about their organizations. The key is to do so in a manner that is transparent, builds trust with readers and responds to or pre-emptly all news quickly and truthfully.

**A SAMPLE WORKPLACE BLOGGING POLICY**

Microsoft's blogging guideline contains just two words: "Be smart". While this terse phrase may work for some workplaces, it will not work everywhere. For those organizations requiring a more descriptive workplace policy it is important to ensure that the policy is clear, direct and unambiguous so that employees know exactly what type of workplace blogging will be acceptable and what will not. It is also fundamental that they understand that unacceptable or bad workplace blogging comes

with a price up to and including dismissal. In addition, to be enforceable, you must be able to show that the policy was brought to the attention of all employees.

*"Microsoft's blogging guideline contains just two words: 'Be smart'."*

A comprehensive workplace blogging policy should include a **Code of Ethics** and a **Blogging Protocol**. For example:

**I. Code of Ethics**

- I will tell the truth.
- I will write deliberately and with accuracy.
- I will acknowledge and correct mistakes promptly.
- I will preserve the original post, using notations to show where I have made changes so as to maintain the integrity of my publishing.
- I will not delete comments unless they are spam, off-topic or illegal.
- I will reply to emails and comments when appropriate and will do so promptly.
- I will strive for high quality with every post - including basic spellchecking.
- I will disagree with other opinions respectfully.
- I will disclose conflicts of interest.
- I will link to online references and original source materials directly.
- I will keep private issues and topics private because discussing private issues would jeopardize my personal and work relationships.
- I will not allow blogging to interfere with my employment responsibilities.

**II. Blogging Protocol**

1. Bloggers must identify themselves on the blog and not post under a pseudonym.
2. Bloggers must make it clear that the views expressed in the blog are theirs alone and do not necessarily represent the views of the employer.
3. Bloggers are encouraged to express themselves. Consistent, interesting blogs will promote the employer and the blogger.
4. Bloggers must respect the employer's confidentiality and proprietary information. This includes financial data, corporate announcements, trade secrets or other information that is not available to the public.
5. Bloggers must respect the employer, fellow employees, customers, partners and competitors.

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*Blogging, still continued from p.3*

6. Bloggers must ensure that blogging activity does not interfere with work commitments.
7. Bloggers must respect and abide by copyrights. Laws that regulate what can be written must be followed (i.e. avoid any statement that could be defamatory, profane, libelous, harassing or abusive).
8. Blogging activities may be suspended if the employer is concerned about compliance with securities regulations or other laws (for example, blogging may be restricted during a takeover bid or immediately before a corporate announcement, etc.).
9. If in doubt, bloggers should ask management whether the proposed content of a blog will run afoul of the employer's blogging policy.
10. A breach of the blogging policy could result in discipline up to and including termination.

*Sherrard Kuzz LLP was among the first law firms in Toronto to address and advise clients about workplace blogging. If you would like to learn more, please contact any member of our legal team.*



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Next in our series of employment and labour law updates:

**TOPIC: Privacy Update**

- ♦ How Privacy Commissioners are interpreting employer obligations.
- ♦ Conduct that is landing employers in hot water.
- ♦ Balancing the employee's right to privacy with the employer's right to manage its business.
- ♦ Achieving business objectives without running afoul of privacy obligations.

**DATE:** Thursday, January 19, 2006, 7:30 a.m. – 9:00 a.m. (program to start at 8:00 a.m.; breakfast provided)

**VENUE:** Delta Toronto East, 2035 Kennedy Road Toronto, ON 416.299.1500 (401 and Kennedy)

**RSVP:** By Dec. 15, 2005 to Tel. 416.603.0700, Fax 416.603.6035 or [jbeiforti@sherrardkuzz.com](mailto:jbeiforti@sherrardkuzz.com)

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