



4 of 45 DOCUMENTS

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## THE RECORDER

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**BODY:**

We share everything about ourselves online. We post candid images, videos, audio files, political views, religious beliefs and gossip. We post permanent, up-to-the-minute intimate details we once held private.

Of course, this emerging bare-all Web culture is shifting how we define our own personal space. We now place greater value on being open about ourselves, since personal reputation is increasingly influenced by what others know about us online. And no one seems to mind. A 2007 Pew Internet & American Life Project study found that 60 percent of Web users aren't concerned with how much information is available about them online. And only 4 percent had a bad experience because of embarrassing or inaccurate information posted about them online.

But what happens when these intimate details spill over into the workplace? Should our legal, off-duty, off-network online activities jeopardize our jobs? In our reputation-based economy, what are the appropriate boundaries between work and our private lives?

### TEACHER AND MAYOR CRITICIZED

In April 2007, Stacy Snyder raised this question in a federal lawsuit filed in Pennsylvania against Millersville University. In her complaint, Snyder claimed that school officials dismissed her from the student teaching program

because of a photo posted on MySpace. The photo showed Snyder at a costume party holding a plastic cup with the caption "drunken pirate." Snyder claimed that the photo was taken after school hours, and the plastic cup's contents were not visible.

In a motion to dismiss, school officials claim Snyder's work was unsatisfactory in several areas. Among those areas, school officials cited Snyder's MySpace posting as an example of poor judgment that may promote under-age drinking. Her claim against Millersville University awaits trial.

In January 2008, an elected official also faced stern criticism for her online conduct. Mayor Carmen Kontur-Gronquist's MySpace photo divided a 600-resident community in Arlington, Ore. The photo taken in 2004 ? well before she even became mayor ? had Kontur-Gronquist posing in a black bra next to a fire truck.

In various news conferences, Kontur-Gronquist explained that she didn't mean that photo to be provocative. It was meant instead to show off her physique. The mayor's friends urged her to post the photo online as a way to spark romance in her life. But a coalition of local residents petitioned the mayor to resign because they said her actions were unprofessional and brought negative publicity to their community.

## LEGAL PROTECTIONS

So do existing laws protect employees engaged in legal, off-duty, off-network online activities? That depends. Most public-sector employees and those covered by collective bargaining agreements can only be fired "for cause." The rest of us are "at will" employees. And "at will" employees can generally be terminated any time for any reason.

Even so, some states have strong protections for employees engaging in legal recreational activities off the clock. Section 201-d(2)(c) of New York's Labor Law, for example, specifically protects "legal recreational activities" engaged in off-site during nonworking hours.

"It shall be unlawful for any employer ... to refuse to hire, employ or license, or to discharge from employment or otherwise discriminate against an individual ... because of ... an individual's legal recreational activities outside work hours, off of the employer's premises, and without use of the employer's equipment or other property."

Various exceptions apply here, including conflicts of interest, violations of collective bargaining agreements, and "other proprietary or business" interests. Still, the legislative history suggests a broad off-the-job privacy scheme. In his report introducing Section 201-d, New York state Sen. James J. Lack explained that his legislative goal was to stop employers from interfering in the personal lives of their employees.

"We have long since passed the days of company towns, where the company told you when to work, where to live, and what to buy in their stores. This bill will ensure that employers do not tell us how to think and play on our own time."

Other states have taken similar steps. California's Labor Code protects legal off-site conduct during nonworking hours. Section 96(k) allows California's labor commissioner to assert any claims on behalf of employees:

"[f]or loss of wages as the result of demotion, suspension, or discharge from employment for lawful conduct occurring during nonworking hours away from the employer's premises."

North Dakota offers similar protections. But, unlike California, North Dakota's Human Rights statute allows employers to restrict off-duty, off-site conduct that is "in direct conflict with the essential business-related interests of the employer." N.D. Cent. Code, ?14-02.4-01.

Yet, in some states, like Pennsylvania ? where Stacy Snyder lives ? no employee protections for off-duty, off-site activities exist.

## OFF-DUTY, OFF-NETWORK ONLINE GUIDANCE?

And so, back to our question: what are the right boundaries between work and our private lives? Legally, any lawful activity occurring off the corporate network, and during nonworking hours, should have no impact on your professional aspirations. In practice, however, the answer is less clear.

On the one hand, employers may have a legitimate reputational concern about being associated with "unprofessional" employee conduct online. In some cases, that conduct could even create conflicts of interest. On the other hand, employees believe what they do off the job is a personal choice. And any policy that encroaches on this delicate realm without a compelling business reason risks widespread resentment, public scrutiny and even litigation.

To balance these competing interests, I think it pays for more companies to have guidance for employees' online activities off-duty and off-network. The same Pew Internet & American Life Project study cited earlier found that 18 percent of Web users had employers that expected some form of self-marketing online as part of their job. And one in five said their employer had some policy about how employees present themselves online.

A good off-duty, off-network online policy understands this context. It asks if the company has a business need to justify interfering with legal, off-duty, off-network activities. If so, it also considers:

- employee's position
- size of the organization
- any conflicts of interests
- effect on on-duty performance
- effect on co-workers.

Educating employees about the potential long-term impact of creating permanent digital footprints could also result in self-restraint and smarter outcomes.

Like most privacy-related questions, this one will continue to evolve. Social networking will, no doubt, increasingly push us to re-define personal boundaries, as more users build virtual communities to connect and share information. Our focus shifts away from how much information we share, and more on controlling access to that information ? a process similar to the one we now use to decide disclosures offline. For now, these are the challenges for our new participatory Web culture.

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