

RISK COMMUNIQUÉ

Social Media – Management Liability / Employment Practices Risk Management

Statistics indicate approximately two of every three Americans visit social media networks online. Facebook alone boasts more than 500 Million account holders worldwide. Average Facebook users add 90 pieces of content per month to their personal profile; are tied to more than 130 “friends” on their account; and 50 percent log in on a daily basis.

Emergency Services Organization (ESO) employees and volunteers (members) are joining social media networks and Web sites at a rapid pace. Facebook, YouTube, Twitter, LinkedIn, personal Web pages and blogs are only a few of the current social media resources that are tapped frequently. ESO members’ usage, written content, as well as photographic and video-based images on their social media sites can create a multitude of problems for them as individuals and the ESOs they work for. ESOs may have an interest with their members’ social media communications that are considered a breach of confidential information, inappropriate, offensive, unprofessional, disparaging, defamatory, discriminatory or harassing. Among other risks, an ESO could be held liable for its members’ postings on their personal social media networking sites. This Communiqué provides ESOs with analysis and risk management guidelines for managing difficult issues involving social media usage.

Members’ reasonable expectation of privacy versus ESO’s interest in objecting to members’ social media usage:

An inherent conflict regarding social media is an individual’s reasonable expectation of privacy or confidentiality when the content (written text, pictures or videos) is being disseminated on the World Wide Web. Any person posting a video on YouTube, for example, is essentially the owner of his or her own international Internet distribution center or “television” station. An ESO member’s social media content could be distributed for “the world to see” even when it’s not the intention. An email, Facebook post, photograph, blog or video, could be passed along to an endless number of recipients.

Of course individuals may attempt to limit who has access to their social media sites or communications, but these communications frequently land in the hands of unintended recipients. Inappropriate, offensive or personal communications often are called to the attention of ESO leaders who are left to determine what actions, if any, could or should be taken against the members who authored the written content or posted the pictures or videos.

A variety of different factors should be taken into consideration when assessing the ESO’s interest in objecting to members’ social media usage:

On ESO time or within ESO facilities – The ESO has a vested interest in what behavior or activities its members are engaged in while “on the clock” within ESO facilities or otherwise engaged in ESO-related activities. Members should be cognizant of their inappropriate usage of ESO-owned telephones, computers or other devices to communicate offensive, intimidating, discriminatory, harassing or other unprofessional social media content. Members may be disciplined even when using their own personal laptop computer or Smartphone while on duty, ESO property or otherwise engaged in ESO-related business.

This is a sample guideline furnished to you by VFIS. Your organization should review this guideline and make the necessary modifications to meet your organization’s needs. The intent of this guideline is to assist you in reducing exposure to the risk of injury, harm, or damage to personnel, property, and the general public. For additional information on this topic, contact your VFIS Risk Control Representative at (800) 233-1957.

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“Off-duty” – Members may post pictures, videos or written text on their personal social media site while off-duty. However, it is crucial members understand that postings made on their own time, from their own computer or Smartphone, and while off ESO property can still harm the ESO, its members and the community served. Under a variety of circumstances, these off-duty communications can be tied directly to business-related activities, personal or professional reputation within the community or co-worker relationships.

ESO-related information – Members of your ESO may use their personal social media networks to discuss ESO-related business information and could violate confidentiality laws and/or ESO policies. Members may communicate sensitive or confidential information about the ESO’s financial, operational and personnel functions. Similarly, social media sites may contain medical or personal information about citizens served by the ESO.

Co-workers as subjects of postings – Problems result when an ESO member posts information, allegations, pictures or videos about co-workers that could be considered harmful to that individual. For instance, a member can post disparaging allegations that are harassing or discriminatory in nature against co-workers. Again, it may be irrelevant if the offending party posts such information while on or off-duty.

Policy Development

It is strongly recommended that the ESO works with locally retained labor and employment counsel to develop policy language pertaining to members’ usage of social media. Because of new social media technologies, case law as well as legislation that involves making personnel decisions such as hiring/selection, discipline, terminations, demotions or promotions is evolving jurisdictionally. Special legal concerns may include non-union employees’ rights to engage in “concerted activities” as protected by the National Labor Relations Act, whistleblower protections, some state laws protect “legal off-duty activities” and wrongful termination and discrimination claims.

Policy language specific to members’ utilization of social media or networking can be woven into a policy on other electronic communications systems. Alternatively, the ESO may develop a stand-alone policy addressing social media or networking. Remember that there are likely policies already in place within your ESO that could be applied to social media usage, such as policies that address:

- Harassment, discrimination, retaliation or other behavior that may be considered inappropriate, offensive or intimidating.
- Inappropriate usage of ESO time or equipment (i.e. computers) or is otherwise detrimental to productivity, morale, work culture or the mission and purpose of the ESO. Social networking has been referred to as social “not-working” because so many members are spending work-related time on their personal social media sites.
- Conduct unbecoming of a member/Code of Conduct – The emergency services industry relies heavily on the public trusting in the integrity and professionalism of its members. ESOs typically have instituted policies that allow members to be disciplined for behavior on or off duty that reflects poorly on the integrity and professionalism of the ESO and its membership.
- Breach of confidentiality or unauthorized communications regarding private business-related information. This may include financial information, operational data, sensitive personnel matters or even photos or videos taken at emergency scenes.
- Misuse or misrepresentation of the ESO’s name or business. For their personal social media site, members may “copy and paste” the ESO’s logo and consequently violate copyright or trademark laws or protections.

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- “Representing” the ESO – An individual’s social media site may indicate he or she is a member of a certain ESO. Therefore, representations made by that person on the social Web site could be misperceived as representing the views of the ESO.

Members should also receive and sign a form acknowledging their understanding of the parameters of the electronic communications systems (including social media) policy. The form should also include the ESO’s ability to monitor their usage while on duty, within ESO facilities or while engaging in ESO-related activities.

Implementing a policy that bans members’ usage of social media networks is most likely unrealistic and will be perceived as overreaching by membership. Instead, focus on a policy that is grounded in common sense and places reasonable restrictions on content and usage. Also seek input from various persons within your ESO when developing policy language. Discuss the ESO’s goals, needs and expectations for such a policy.

Train, Train and Train Some More

Utilization of social media and other electronic communications systems is complicated and a daily-changing subject matter. Attempting to satisfactorily address the topics by written policy alone is not recommended. ESOs are encouraged to provide training for its membership on social networking and other electronic communications systems. It is important not only to explain the parameters of a social media and electronic communications systems policy, but also answer members’ questions. Straightforward, periodic training will help ESO members understand that the ESO is not trying to play “big brother,” but instead regulate social media usage that may be clearly detrimental to the organization or its members.

Conclusion

Americans value and protect their reasonable expectations of privacy in respect to their personal activities, such as what Web sites they frequent, communications they author or photographs or emails they send. However, problems often arise when an ESO member’s personal communications are inappropriate, offensive, disparaging or discriminatory and disseminated to others within the ESO or members of the community served.

It is clear that as individuals we choose how to communicate with others. Social media carries a greater risk of the information being distributed to many outside the originally intended scope of communication. Educate ESO members about exercising sound judgment when utilizing social media, while reinforcing the potentially detrimental impact of irresponsible communications.