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I know all about the latest fashion at Abercrombie, Hollister, and Juicy Couture. On Saturday mornings I have watched marathon episodes of America's Top Model, Making the Band, Laguna Beach, and the fast talking Gilmore Girls. If you have not guessed by now, I have a 13 year old daughter. This is an exciting time for women – we have the first female speaker of the house, perhaps the first female to run for president, and now the first vaccine specifically for young women. I should be thrilled, but to tell you the truth, I am conflicted. First of all, I am tired of hearing about Speaker Pelosi's suits and Hillary's hair –get over it, o.k. Look what happened when someone talked about Donald Trump's hair. But what I am really conflicted about is the Cervical Cancer Vaccine.

I am thrilled that a vaccine has been developed to help prevent cervical cancer. Nothing could be more important. Cervical cancer infects 14,000 women and girls a year. Thirty-nine hundred women die from it. The vaccine would be given to women and girls ages 9 to 26, with most literature recommending that it is administered by the 13th birthday. This vaccine is truly a milestone for women's healthcare. However, the lawyer and mother in me comes through raising questions and concerns. How long has the vaccine, whose brand name is Gardasil® been in clinical trials? What age group was tested? Were young women who had not reached puberty tested and would this make a difference? The estimated cost is \$360.00, for a series of three injections- - will insurance cover this? Will all young women have access to this vaccine? What about the moral arguments made that administering the vaccine promotes sexual activity? What if parents/guardians refuse to allow their daughters to have this vaccine? Will young women in some states not have access to this vaccine due to a moral majority? Should this vaccine be included as a required immunization, thereby affording immunity to the pharmaceutical company and the government?

Many drugs that have been considered beneficial in the past have later proved to be harmful. A good example is diethylstilbestrol ("DES"), which was prescribed to pregnant women from the 1950s-1970. It was poorly tested and resulted in massive birth defects in children. Years later the female children of women who had taken DES were found to have a higher than normal instance of uterine, ovarian, and cervical cancers. We have heard so much in the news in the last few years about the FDA rushing to get something on the market. Pharmaceutical companies are powerful. I don't want to put a damper on this breakthrough vaccine, but I do believe we need to pay attention. There will be many parents like myself who will have concerns and questions. Who is going to provide the answers?



Carmen Samaniego
2006 – 2007 Chair

PRACTICE POINTS:

BLOGS AND THE WORKPLACE: DOOCING AND BEYOND

By Andrea M. Johnson

BLOG?

Are we running to catch up or leading the pack? Doocing, moblogs, podcasting, vlogs, and the like are the real-time terms of the virally replicating publications generally described as “blogs.” The impact blogs have in business today is very real. While companies want blogs for their own advertising, they also fear blogs – that is, they fear the personal commentary of employees who blog “in-house” and at home. Blogs are exploding with our ever-expanding technology. Companies are racing to catch up and make sure that there are policies and practices in place to protect their businesses. This article is a brief review of some of the terminology and employment issues related to blogs and what companies might consider doing in this regard.¹

What is a BLOG? Blog comes from a combined form of **web** and **log**. Typically a blog is a publication of an online diary. Blogs can be rambling day-to-day or event-to-event notes of the writer, with, perhaps, commentary by others who may visit the blog and add their two-cents worth or links along the way. Blogs can recite the daily doings of the writer; they can reflect opinions; they can give advice. In short, they can be whatever the writer or writers want the blog to be. The blog may be extremely personal and linked only to that individual or they may offer more universal opinion, relating to a subject, cause, platform, or issue. They have been used politically. A *constant* of blogs is that they are *always changing*, depending on who and what is being commented on. Because blogs seem to invite comment either from the initial writer or others who may wind their way to that blog, they can be dynamic and explosive, growing and spreading without any way to stop the discussion.

The new terminology can be mind-boggling (or mind-blogging!) by itself. One key term for employment purposes is “**dooce**” or “**dooced**” (past tense), which means to fire someone because of comments made on a personal blog. All of these terms and this blog activity exist within the “**blogosphere**” or the total universe of blogs.

Some of the statistics demonstrate why this is an important issue. It is said that some 75,000 new blogs are created daily, that there are 1.2 million postings made each day on one blog or another. Estimates of the number of blogs now in existence range from 10 to 100 million, depending on the source.

DOOCE?

BLOGOSPHERE?

Comments about our neighbors, our co-workers, our bosses or our families used to be confined to oral comments traded at the grocery store or over the backyard fence, or sniped over cube walls or at the water cooler or at the coffee maker. While potentially damaging enough, those off-the-cuff oral comments change when typed and published through the Internet. They spread faster than a San Diego County wildfire during the California Santa Ana season. The single stroke of the “enter” button, *whether done deliberately, impulsively, angrily, impassionedly, or carelessly*, can send a message across millions of desks in the world. This is what has employers worried.

Big employment issues in the world of blogs and employers are the following:

1. Can employers monitor blogs and make decisions on the basis of what is in a blog?
2. Are there privacy concerns with the review of blogs?
3. What policies should companies consider and how are they to be enforced?

Actions that an employer may take as to employees who blog on their own free time may depend on whether the employee is employed “at will” or under a contract, or whether he/she works for a governmental agency.

The big legal issues in play are:

- privacy rights/torts
 - monitoring of blogs
 - invasion of third-party rights
- harassment of individuals
- defamation/libel claims
- intellectual property issues
- disclosure of trade secrets
- retention of data

While blogs are big on the Internet, there are few actual cases to date that have focused on blog issues. There are almost no reported opinions in the employment world. This absence of reported opinions is likely because blogging is somewhat new. There is no question, however, that

blogging is becoming a seamless part of corporate and personal life, like cell phones and email. As such, there is no question that cases will either have blog entries up front and center or, like all other forms of expression, blog entries will simply be in the general background of discourse and discovery – of all litigation.

The issues are on multiple levels. As the blogosphere expands, so will concern about content and, employer reaction will heighten as well. If firings (dooings) result, so lawsuits will likely prosper. Media interest in this issue is high. There are concerns about the First Amendment, and those make the issue one of high profile and interest. Because of the high profile of some of these issues and the risks attendant with the easy publication, the public spotlight can easily highlight employer action. Further, there may be risks not just from failing to act to a disturbing publication but from over-reacting and raising privacy and other concerns and lawsuits. These risks are not just from a legal perspective but from a business, practical perspective.

To avoid these issues, we could stop all blogging. That is extremely unlikely and likely counter-productive to business. It would be attempting to put a genie back in the bottle. So, rather than ban blogging, the better approach is to invoke a policy to appropriately protect a business. At a minimum, we need to communicate what we expect and what will provide the basis for our reaction. Does a blogging policy make sense? If not, what will the company guideline be, if an offensive or out of line blog be discovered?

Much of the murkiness that may exist in this area could be resolved through a clear policy spelling out what the employer's expectations are. Bloggers tend to operate in a "no man's land" of the "quiet" Internet, where they feel that they are insulated from employer scrutiny because the blogging is done at home, is "personal" to them, and something they never conceive others (i.e., management) would ever view (though one wonders why not). Well crafted and publicized policies should awaken employees to the reality of the company expectations and Internet openness.

What should a blog policy cover? A primary goal should be to protect trade secrets. In addition to preventing disclosure of sensitive data and trade secrets, the policy should be aimed at protecting co-worker and company reputation. The failure to set blog parameters can lead to unflattering portrayals of the company or its managers/workers. This could happen, in fact, even by "well-intentioned" employees who believe that they are listing constructive criticism for the company's "good." Naturally, disgruntled employees can use a company's professed democratic culture and open blog as a cover to dump disparaging comments at the business and individuals.

What are good guidelines for blogging policies? Factors to consider include initially: (1) evaluating the industry involved and (2) contrasting the business culture that the blog policy must exist in. In short, how friendly or not should the policy be? What does the business want to protect? Why? What are the privacy interests of the company? The confidentiality policy and privacy policy should be incorporated in any policy. What expectation of privacy, if any, should employees have if they blog? Will the company "protect" the blogger?

The construction of a blogging policy is, at heart, an education about why the company needs the policy and about what the core values of the business are. Thus, a policy should explain why it is necessary and what liability is sought be avoided. Employees should be aware of the legal ramifications to them, as well as the company. As with any policy that we wish to be effective, it should be clear in its language so that all understand its purpose and goals, and it should be something that the business can live with. Policies should mean enforcement across the board. So the business needs to be sure that it can enforce, will enforce and be content to enforce the policy as written – that it meshes with corporate culture and will not lead to inconsistent enforcement among employees – and, thus, avoid claims of discrimination.

Andrea M. Johnson is a partner with Powers & Frost, heading the Employment and Commercial Litigation Section. "AJ" represents Fortune 500 and local Houston enterprises, in various trials and arbitration defense and is a frequent speaker. She has been written up in the Biggest Suits Section of the Texas Lawyer. Additionally, AJ is a sought-after speaker for business groups and for client training. AJ worked as a law clerk to United States District Court Judge Hugh Gibson, Jr., of the Southern District of Texas, and married a seventh-generation Texan. Houston is her home.



ENDNOTE

- 1 This article is a short summary of a full article that may be downloaded by accessing Ms. Johnson's bio on the Powers & Frost website, www.powersfrost.com.

BOOKS, DVD'S & CD'S NEEDED

By Carol E. Jendrzey

Are you wondering what you can do on those cold, gray February weekends? Are you tired of stacking and restacking those DVD's and CD's? Well, WAL has the answer — the WAL Used Books Sale. Every year at the Annual State Bar Convention, WAL raises money for the Women's Advocacy Program through the sale of gently used books, DVD's and CD's. So brighten up those dismal weekends and decrease the clutter on your shelves by gathering up and donating these items to WAL. Don't miss out on this opportunity to help the Women's Advocacy Program by donating books, DVD's and CD's to the sale. Contact Ronnie Harrison at (713) 223-4034 or by email at ronnie-harrison@allegal.com if you have any items to donate.

alzheimer's association the compassion to care, the leadership to conquer

The Alzheimer's Association is in the process of updating their referral lists. The Association does not "endorse the participating attorneys. It is purely for informational purposes only. We are looking for attorneys from all parts of Texas.

Our older population at times has difficulty asking for assistance in locating needed services. Many of them have never required the services of a lawyer and can be hesitant, if not intimidated, at the prospect of finding one in their area.

This is not a request for pro bono services. Interested Attorneys please send your contact information and practice area to: Laura.Alpert@Alz.org.

The Alzheimer Association, a nationwide 501(c)3 organization founded in 1980 provides support and assistance to persons affected by Alzheimer's disease and related disabilities; and to their families and other caregivers. The Association encourages and supports research into the cause, improved diagnosis, prevention and cure of Alzheimer's disease.

For more information please visit our web sites:

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