

# Delaware Employment Law Letter

A monthly survey of employment law developments in DELAWARE

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## ELECTRONIC WORKPLACE

### **Navigating blogs in the workplace**

by William W. Bowser

*Blogs are putting Delaware on the map. While we're most often known as the state of incorporation for many Fortune 500 companies or for our thriving credit card industry, that new technology has recently brought new national attention to the Diamond State.*

A blog, short for "web log," is an Internet application containing periodic postings. **Blogs** are accessible to anyone with access to the Internet and often allow visitors to leave public comments. They're easy to access and free to use, and they can reach a potentially unlimited audience, which may include your employees, customers, and competitors.

#### *A gathering storm?*

The firing of a reporter by the *Dover Post* for comments on his personal blog and the continuing saga involving Smyrna town officials have been covered intensely by the national press. The reason is clear. Those cases represent the first in what may be a deluge of cases involving the role of **blogs** in our workplace and in our society, a deluge caused by the sheer number of **blogs** combined with an unprepared legal climate. The growth of the "blogosphere" is shocking. One study estimates that 60 Billion **blogs** exist worldwide and 100,000 new **blogs** are created every day.

#### *Uncharted reef?*

While the number of **blogs** is exploding, statistics show that most employers have failed to take steps to shield themselves from

potential liability by developing a clear blogging policy. A recent national study indicates that only 15 percent of employers have specific policies regarding blogging. Nevertheless, **blogs** by your present and former employees pose workplace risks, including the following.

**Breach of confidentiality.** A blogger may reveal confidential information about your company, including trade secrets. For example, a blogger complaining about a project assignment may, without thinking about the implications, reveal details of a new product that's under development. Or an accounting department blogger complaining about having to work an all-nighter on a big stock deal may inadvertently be revealing insider information.

**Defamation.** The freewheeling culture of blogging may encourage people to say things online that could defame their employer, management, co-workers, customers, or competitors.

**Harassing or otherwise offensive content.** Imagine, for example, a situation in which an employee with a disability is being accommodated with a modified work schedule in compliance with the Americans with Disabilities Act. The employer has properly responded to inquiries about the arrangement by saying only that the company is handling the individual's situation in accordance with federal law. A blogger complains that that "slacker" is being allowed to come and go as he pleases while the rest of the department suffers for it and speculates about the person's possible medical condition.

Or imagine a blogger spreading completely speculative rumors that a recently promoted colleague got the job by performing sexual favors for the boss. Conversation that shouldn't go unaddressed in the workplace can be extremely difficult to curb when it occurs anonymously in cyberspace.

**Inappropriate content.** Such content can range from postings that are disrespectful to your company to those that are completely unrelated to employment but may still reflect on you.

### *Safe harbor?*

It's important that you cover blogging in your Internet or electronic communications policy. The policy should prohibit disparaging the company or its employees, customers, or competitors either by name or implication. As with your other policies, it should be communicated to employees when they're hired and periodically thereafter. It also should caution them that they must avoid creating the impression that the views expressed on a blog are anything more than personal opinions.

Following are some points you may want to cover in your blogging policy:

1. Persons who broadcast information regarding the company or its employees, customers, or competitors must make clear that views expressed in the blog are theirs alone and don't represent the views of their employer.
2. In blogging, as in any other communication, employees must respect the company's confidentiality and proprietary information. Employees should be reminded of the confidentiality provision in the employee handbook and, if they're required to sign confidentiality agreements, of their commitments under those agreements.
3. Employees who have questions about the blogging guidelines should direct their questions to a designated company official who will serve as the authority on the policy and on helping them understand how it applies to their situations.
4. As with all communications, persons communicating through **blogs** are expected to treat the company and its employees, customers, and competitors with respect.
5. The company may ask that certain topics not be disclosed for confidentiality or legal compliance reasons, and employees are expected to honor those requests.
6. Employees are responsible for ensuring that their blogging activity doesn't interfere with their work commitments, and they should be familiar with the company's other policies regarding Internet use, which also apply to **blogs**.

### *Smooth sailing*

The benefit of a blogging policy is that it puts your employees on notice of the standards of conduct that apply to blog postings. If you then learn that an employee has violated the policy, you can address the situation through the normal disciplinary process. Before imposing discipline, however, remember that state laws differ and certain types of communications may be protected under state and federal law. You might consider consulting counsel before taking any disciplinary action.

*Find out more about the perils of the electronic workplace in the subscribers' area of [www.HRhero.com](http://www.HRhero.com), the website for Delaware Employment Law Letter. You have access to an HR Executive Special Report on the subject: "How to Avoid the HR Hazards of Your Electronic Workplace." Just log in and scroll down to the link for all the Special Report titles. Need help? Call customer service at (800) 274-6774.*

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