

Virginia

Regulatory Hot Tip 2017 – 6

Professional Insurance Agents Association of Virginia and DC, Inc.

SOCIAL MEDIA DO'S AND DON'TS

Virtually all businesses use some form of social media such as websites, Facebook, and Twitter for promotional purposes. Even “Mom & Pop” operations now can achieve almost limitless market penetration and cultivation at virtually no cost. Thus, to earn profits in the 21st Century, exploiting social media is not a question of “if” but “how.” In addition to your sales-oriented focus when using these cyberspace tools, you must also focus on the *legal ramifications*. Always keep this thought in mind: When the urge to post arises, you must put on your “lawyer” hat in choosing what you say and how you say it.

First and foremost, always be as truthful and accurate as possible in your messaging. If you post even slightly misleading information, current or potential clients as well as competitors and regulators can react in a negative manner. Try to fact-check the content before hitting “enter” to ensure that your statements are invulnerable to attack.

The author of this Regulatory Hot Tip, Barrett E. Pope, Managing Director of DuretteCrump, PLC, endeavors to provide accurate and authoritative information about the subject matter covered as of the date of publication. However, the substantive information and any statutory authority contained in this Hot Tip should be verified as they are subject to change with the passage of time. The author provides this Hot Tip with the understanding that he is not rendering legal, accounting, or other professional advice or counsel. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

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In order to reduce the risk of disseminating problematic content, always refrain from posting on impulse or when your emotions are running high. What may seem like a good idea at a particular moment may prove harmful later. Remember the advice about writing a letter and placing it in a drawer overnight *before* mailing it? That adage made sense when people actually corresponded with others, and it is particularly instructive today.

Try to have someone else within your agency review your comments before you post them. Others may be more objective or less passionate—and may catch something you may have missed, thereby saving you from yourself.

Be sure to stay on message. Post about what you know that is relevant to your business, and avoid posting about what you don't know. That which governs decisions on whether to diversify your business also governs posting on social media. Danger lurks when venturing into the unfamiliar territory.

When using social media, it is imperative that you avoid self-inflicted wounds. For example, never post anything that will open yourself or your agency to public scorn or ridicule. Intemperate comments and inappropriate photographs or re-tweets can—and likely will—come back to haunt you.

Try not to disclose confidential or proprietary information. The former may harm (i) your agency or (ii) an actual client or employee; the latter may harm an advantage that you enjoy in the marketplace. Never disclose anything regarding the *specific* financial position or performance of your agency. You don't want to risk having such information used against you later by litigants or regulators.

Most importantly, take precautions against using social media in a way that will expose you and your agency to a lawsuit alleging defamation or business disparagement. News travels faster than ever these days, and your competitors may quickly learn of every perceived slight or insult. Defamation is comprised of a (i) false statement of (ii) fact (not opinion) that is (iii) damaging to the reputation of (iv) someone else and is (v) published so that a third-party learns of it. Keep in mind that you can be held responsible even if others re-publish your defamatory remarks. And, the resulting damages can be catastrophic.

The same holds true when posting about employees. Unless the message is clearly positive and appropriate for public consumption, never post anything about a current or former employee without first consulting legal counsel. Such restraint is

especially key if you or your agency become the target of a former employee's vitriolic publicity campaign against you. Many employee-initiated lawsuits are grounded upon an inappropriate post by someone who signs or used to sign his or her paycheck—even when you are simply trying to set the record straight! Once again, damages awarded in such circumstances can be substantial.

So, how do you handle someone else's unfounded attacks on social media? It is tempting to make that decision on your own, but you should turn to counsel for a well-crafted and reasonably "safe" rejoinder—one that is more likely to withstand criticism later. Remember another old saying: "You can't un-ring a bell."

In summary, ask yourself these two questions before using social media: *If I were the subject of this post, how would I feel?* And, more importantly, *what might I do in response?*