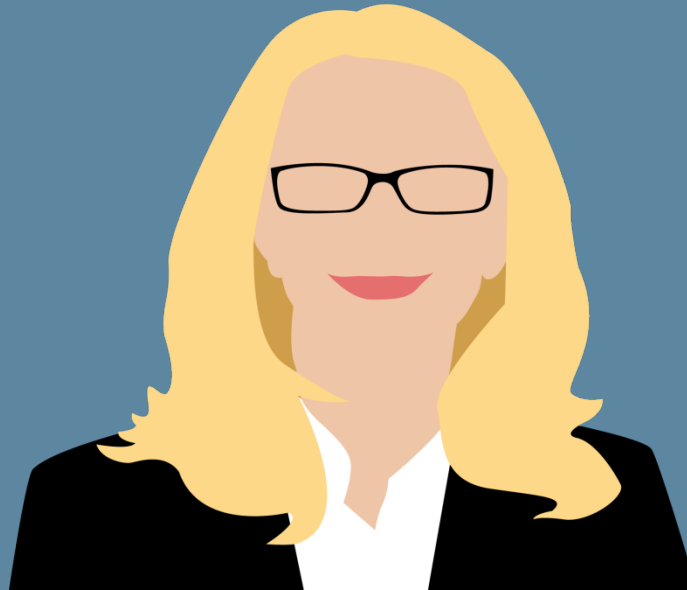


Legal Lunch with Laura



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January 21, 2014 Lunch Date

Drug Tests and Background Checks: How? When? Why? and What to Do With the Information Obtained

**Co-Presenter: Jim Randisi from
Randisi & Associates, Inc.**

*Webinars are held on the third Tuesday of every other month from
12:00 – 1:00 p.m.

How Far Can You Go? Employer Rights and Liabilities in the "Age of Connectivity"

Presentation by
Laura L. Rubenstein, Esq.

24/7 Connectivity

In our current "Age of Connectivity" – with smart phones, public WiFi, and the ability to be connected 24/7 – electronic monitoring of employee technology may seem like an attractive option, particularly when they use company property. But at what point does an employee's rights to privacy end and an employer's right to know begin?

Objectives for Today's Webinar

- The NLRB's recent position on “protected concerted activities”
- Drafting an effective social media policy and what should and should not be included
- How to ensure that your organization retains ownership over login information, passwords, and corporate social-networking accounts

Disclaimer: This webinar is provided for informational purposes only and is not deemed legal advice. Participation in this webinar does not create an attorney-client relationship with Attorney Rubenstein or Offit Kurman. The opinions expressed throughout this webinar are the opinions of Attorney Rubenstein and may not necessarily reflect the opinions of Offit Kurman.

Webinar Poll

Do you think your employees check non-work-related internet sites throughout the day?

- q Yes, frequently
- q Yes, sometimes
- q No, never

Lost Work Time Due to Internet Use

64 percent of employees visit non-work related websites **every day** at work.

Of that group:

39% spend one hour or less per week

29% spend 2 hours per week

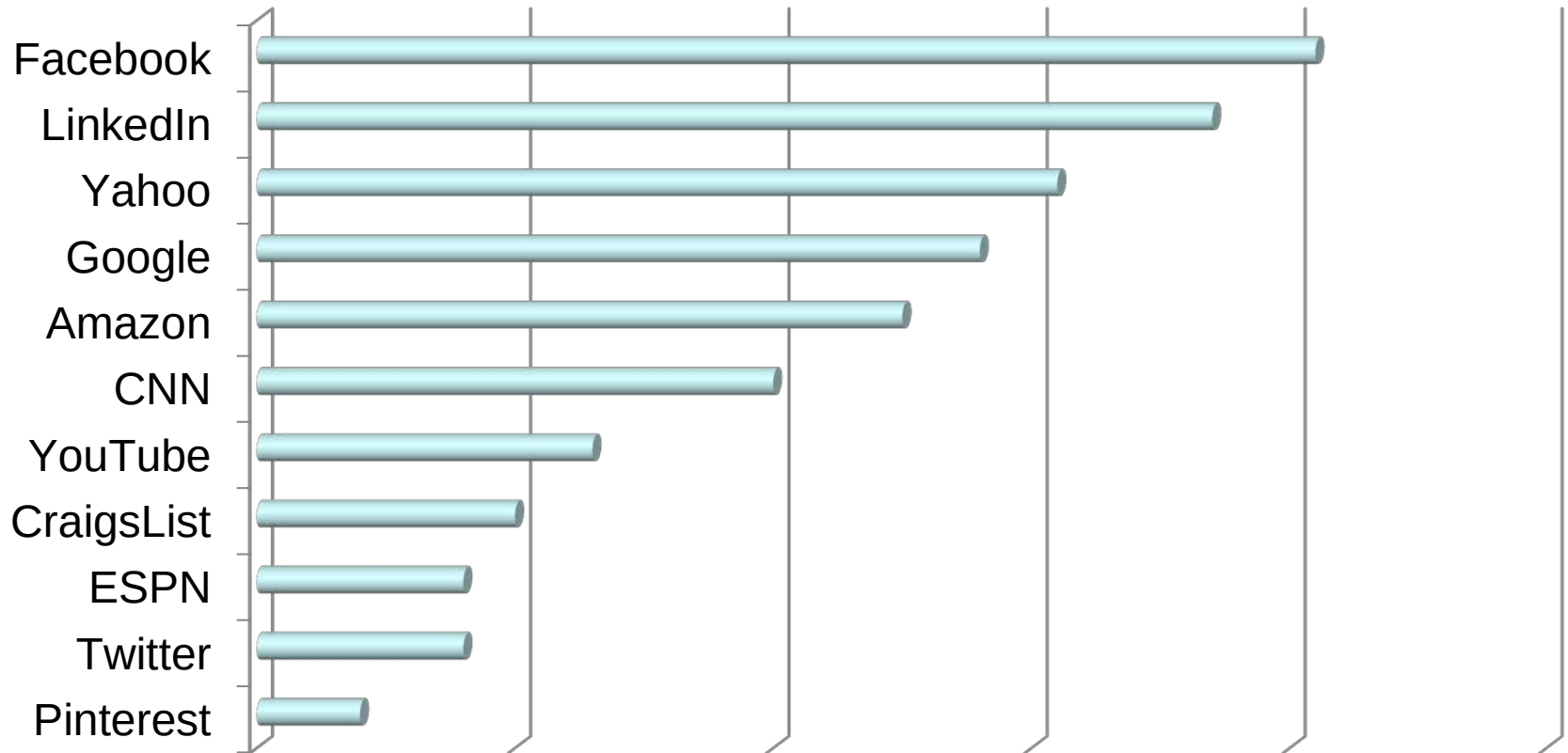
21% wasted five hours per week

3% waste 10 hours or more per week

Source: <http://www.salary.com/wasting-time-at-work-2012/>

Most Popular Websites Viewed

Source: <http://www.salary.com/wasting-time-at-work-2012/>



Webinar Poll

Are you friends with your co-workers on Facebook?

q Yes

q No

q Some of them

Should you be friends with your co-workers on Facebook?

Pros

- You can monitor your employees' activities during work.
- It can bring you closer to your colleagues knowing you may have common interests or friends outside of work
- You can get in the good graces of your subordinates by accepting their friend request, but make sure you use the privacy controls so they don't see anything that could be used against you.

Cons

- Your employees have access to your personal photos, posts, friends, comments.
- You learn what your employees do outside of work or on "sick days?"
- The closer a boss gets to her subordinates, the more problems can crop up. Decisions may not be made for legitimate reasons, but out of protection, anger, jealousy or based on other private information that you otherwise wouldn't know.

The Rule of Thumb Today

One employee, griping alone on Facebook about her employer – CAN BE FIRED

BUT

Two employees, complaining together on Facebook about their employer – CANNOT BE FIRED.

Source: <http://www.theemployerhandbook.com/2013/11/nlrb-oks-firing-of-two-employee.html#!>

The 1935 Wagner Act

The Wagner Act declared that employees have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of mutual aid and protection.

The Virtual Water Cooler

What used to be employees complaining to each other around the water cooler is now conducted more publicly on Facebook and Twitter and carries a greater impact outside of the office.

DNT FB @ WRK . LOL!

Over the past three years the NLRB has been dealing with issues involving the use of Facebook by employees in various ways.

The first case in 2010 was *American Medical Response of Connecticut, Inc.*

Design Technology Group

359 NLRB No. 96 (April 2013)

Three employees upset about treatment by management discussed on Facebook a booklet called *California Workers' Rights*, and agreed to look at it the next day were terminated. The NLRB found them to be engaged in protected concerted activity and found their termination to violate the NLRA.

Karl Knauz Motors, Inc. 358 NLRB No. 164 (Sept. 2012)

- This case illustrates how social media activity is not always protected.
- Individual complaints are not protected.
- Activity that is not concerted is unprotected.

Workplace Policies

The NLRB is now scrutinizing employer policies which tend to “chill” employees in their exercise of Section 7 Rights.

NLRB's Advice on Lawful vs. Unlawful Rules

1. UNLAWFUL RULE

Walking off the job or leaving the plant without permission or notifying the supervisor will be considered cause for immediate discharge

1. LAWFUL RULE

Leaving your work station without permission or approval will be considered cause for disciplinary action

NLRB's Advice on Lawful vs. Unlawful Rules

2. UNLAWFUL RULE

You must also be sure that your posts are completely accurate and not misleading.

2. LAWFUL RULE

Make sure that you are always honest and accurate when posting information or news, and if you make a mistake, correct it quickly.

NLRB's Advice on Lawful vs. Unlawful Rules

3. UNLAWFUL RULE

Treat everyone with respect. Offensive, demeaning, abusive, or inappropriate remarks are as out of place online as they are offline, even if they are unintentional.

3. LAWFUL RULE

Inappropriate postings that may include discriminatory remarks, harassment, and threats of violence or other similar inappropriate or unlawful conduct will not be tolerated . . .

NLRB's Advice on Lawful vs. Unlawful Rules

4. UNLAWFUL RULE

Treat everyone with respect. Offensive, demeaning, abusive, or inappropriate remarks are as out of place online as they are offline, even if they are unintentional.

4. LAWFUL RULE

Avoid using statements that could be viewed as malicious, obscene, threatening, or intimidating, that disparage customers, members, associates, or suppliers, or that might constitute harassment or bullying.

NLRB's Advice on Lawful vs. Unlawful Rules

5. UNLAWFUL RULE

You are encouraged to resolve concerns about work by speaking with co-workers, supervisors or managers.

5. LAWFUL RULE

Keep in mind that you are more likely to resolve work-place complaints by speaking directly with your coworkers or by utilizing our Open Door Policy ...

NLRB's Advice on Lawful vs. Unlawful Rules

6. UNLAWFUL RULE

Don't release confidential guest, team member, or company information

6. LAWFUL RULE

Maintain the confidentiality of trade secrets and private or confidential information. Trade secrets may include information regarding the development of systems, processes, products, know-how, and technology. Do not post internal reports, policies, procedures, or other internal business-related confidential communications.

Who owns the virtual you?

Effective October 1, 2012, Maryland law prohibits a public or private employer from requesting or requiring “that an employee or applicant disclose any user name, password, or other means for accessing a personal account or service” such as Facebook, LinkedIn, or Twitter.

You may own the virtual you, but it could cost you...

Consider the contractor who Tweeted for Phonedog; gained followers; and then was asked to pay \$2.50 for each follower after leaving.

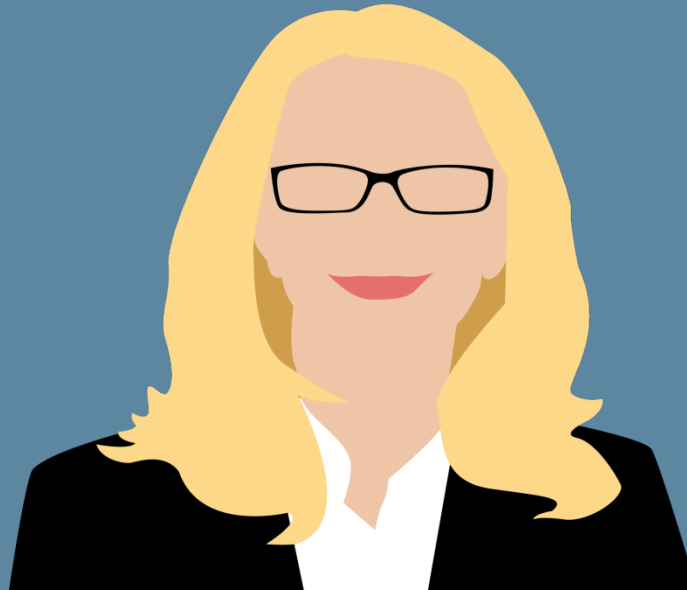
Dr. Eagle's LinkedIn Account

2013 Pennsylvania State Court Decision about who owned a LinkedIn account belonging to the former founder/owner of EdComm after she left.

Questions?



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