



Three Ways Your Smartphone Keeps Your Company's Lawyers Up at Night

News

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Scott Fanning was quoted in *Fortune* on June 3, 2015. The article “Three Ways Your Smartphone Keeps Your Company's Lawyers Up at Night” discussed how popular apps now make it possible to do the same old dumb stuff, only faster and with a wider audience.

“We’re seeing a lot of the same problems that have always caused workplace lawsuits. But, with the technology people have now, it’s much easier for bad things to happen,” said Scott. “Quicker, too.”

What kinds of bad things, exactly? Here are three examples:

Sexual harassment. Dating apps like Tinder and Happn are “really designed for bars and coffee shops, not workplaces,” Scott said. “Some people use the GPS to instantly connect with other people in the same office building.” The contact might not be welcome, but “just having a profile on the site could be construed as permission to contact you. We’ve seen some cases of stalking and harassment come out of that.” He added that “employees talking about their romantic escapades or bragging about hook-ups with coworkers” they met on dating sites have led to harassment suits, too.

Gossip. Yik Yak is mostly used by college students now, but Fanning says new grads are bringing the bulletin board into the workplace with them — and discovering Memo, another popular site “that’s actually designed for employees to vent about employers, working conditions, pay, and so on,” Scott noted. Employers could safely ignore this kind of chatter, he said, if the anonymous commenters were always civil to each other. Alas, too often a thread deteriorates into “bullying or harassing, which companies then have a legal obligation to do something about,” ideally before things get really out of hand and somebody files a lawsuit.

Photos and recordings. It’s easier than ever now to abscond with confidential company information and drag it through the cloud onto a personal computer — or even, with apps like Periscope, upload it in real time directly to the Internet. But beyond that, “bosses have to be aware that anything they do or say can be recorded and used in litigation,” Scott said. “We’ve had cases where an employee recorded two minutes out of a 20-minute termination meeting, and introduced it as evidence in court, even though it was completely out of context.”

Scott’s clients have also come to him with “cases where an employee purposely left a recording device in an office restroom” and stalking situations “where an employee kept photographing a

device in an office restroom, and stalking situations, where an employee kept photographing a colleague without their permission, which is usually harmless but certainly creepy.”

Couldn't employers avoid these headaches just by banning personal devices from the workplace? They could try — except that the National Labor Relations Board, in what Scott called “an attempt to stay relevant,” has issued regulations severely limiting employers' ability to do anything that might keep employees from communicating with each other, in case they decide to unionize.

“So you need very narrowly tailored policies, tied to a specific business concern, like prohibiting personal devices beyond a certain point in the research-and-development department, for example,” Scott said. “For companies, protecting their interests and their employees, while still satisfying the NLRB, is a delicate balancing act.”

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