



# Former Employee Firebombing – 5-Step Plan To Handle Incendiary Online Reviews

Insights

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Your organization spends significant capital crafting your corporate brand and reputation to appeal to consumers and potential employees alike. Now, imagine the first internet search result for your company coming back in bold capital letters:

## “THE OFFICE IS FULL OF COCKROACHES AND RACIST PEOPLE”

The rise of comment/complaint-oriented websites (Yelp, ripoffreport), social media outlets (Facebook, Instagram), and job-seeking specific sites (Glassdoor, LinkedIn) has exposed employers to fake or slanderous online postings from former employees. While free speech is a beautiful thing, the Founding Fathers likely did not anticipate the ease at which a former employee can firebomb you with fake reviews across multiple web platforms, ruining your online reputation through a few simple keystrokes.

And these kinds of postings will get noticed by those considering a job at your company. According to a recent study from CareerArc, 91% of job candidates seek out online resources to review an employer’s brand before applying for a job. The most visited sites are Facebook (47%), Glassdoor (41%), and LinkedIn (28%).

The general response from employers to such posts is “But that’s defamation!” Unfortunately, while the number of online forums where former employees can anonymously comment on their employers has expanded, the legal landscape has been slow to respond to internet defamation or fake reviews. The majority of websites still permit anonymous users to leave comments and reviews without any review or vetting.

## The Hurdle: The Communications Decency Act

Almost all content platforms have a policy that makes clear they will *not play arbitrator in defamation disputes*. And they feel comfortable defending legal challenges to this principle. Websites such as Glassdoor have tested, and stand behind, the legal argument that any claims against websites who host review platforms are barred under the Communications Decency Act (CDA).

The CDA provides that “no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” The

statute also says that “no cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.”

Reviewers, however, and other creators of online content remain liable for publishing information if they are responsible, in whole or in part, for the creation or development of that information. Immunity under the CDA extends only to information provided by another information content provider.

## **What Employers Can Do: A 5-Step Plan**

If you or your company have been victimized by former employees’ fake or false reviews, there are five steps you can consider to respond or remove the content from the internet.

### **1. 1. 1. *Flag Or Report The Questionable Content***

While websites will generally not play arbitrator in defamation disputes, they will generally prohibit false, misleading, defamatory and other “abusive” conduct. If the subject of a harmful review believes the content conflicts with a website’s terms of use, community guidelines, or standards of conduct, it can “flag” or “report” the content.

However, websites such as Glassdoor note that any content decisions are in their sole discretion. Therefore, the strategy and response to the community guidelines must be specific and well-founded. Because there is generally only one shot at getting the content removed, we recommend having counsel advise on the best methods and paths to flagging content.

### **2. Respond With A Measured Tone**

You may also take the opportunity to respond to comments or content posted about your company. Such a response should be tailored to the general issues and not be an attempt to argue over any specific points.

When crafting the rebuttal, you should use a calm tone. Make clear that any alleged inappropriate conduct will be investigated and state the relevant policies in place.

### **3. Contact The Poster**

If you can identify the reviewer, you can reach out to solicit additional information. You may even provide the former employee with a cease-and-desist letter based on internal policies or agreements to which the individual is subject.

Another option is approaching the employee with some form of settlement agreement to have the content removed and buy your peace. Although this strategy may be difficult to swallow, it can be the quickest way to have content pulled.

### **4. Bring A Lawsuit**

If a cease-and-desist letter does not suffice, you always have the option of a lawsuit. As explained above, lawsuits against the websites themselves are difficult due to the CDA. However, lawsuits against individual posters for defamatory posts are still an option. Additionally, if the poster has committed trademark or copyright infringement, or has disclosed intellectual property, the lawsuit options multiply.

## 5. ***Generate Positive Content***

In addition to all of these options, the best way to avoid fake posts becoming the masthead of your company's online search results is to have positive content. While you cannot force or incentivize employees to post positive reviews, you can create a culture that leads to good reviews washing out the fake ones.

### **What Employers Should Do: Be Ready**

By developing a plan and implementing policies ahead of time to respond to negative reviews, you can avoid the temptation to respond with a heat of the moment comment that will only create more issues. Working with counsel to implement internal policies and response mechanisms will hopefully help to avoid these issues, or at a minimum put a plan in place to respond.

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