

# EMPLOYMENT LAW ALERT

May 2010

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## More On Social Media: LinkedIn Today, Gone Tomorrow

By: Jeffrey M. Schlossberg and Douglas J. Good

**F**or many companies, social networking websites such as LinkedIn provide marketing and business development opportunities. But employers must take prudent, proactive measures to avoid unintended, perhaps disastrous, consequences.

Here's the problem: take, for example, LinkedIn, one of the most popular social networking sites for business. One of its primary features is to permit users to invite their personal contacts to become "Connections." The problem is, those contacts can often be key customers or suppliers - precisely the people many companies want to keep secret from their competitors.

Of course, not all customer or supplier lists qualify as "trade secrets." But one of the important elements of establishing a "trade secret" claim is the ability to document that you have taken reasonable steps to protect the confidentiality of your "trade secret." Allowing the information to be readily available on LinkedIn will severely compromise a claim of having taken reasonable measures to protect confidential business information.

In a typical situation, an employee familiar with the confidential contacts of his or her company takes another job and seeks to continue communication with those contacts at a new place of employment. The former employer then takes legal action, attempting to seek the court's protection of its confidential information. However, in New York, relief will likely be denied to the employer if the court finds that the supposedly confidential information was readily ascertainable from sources related to the employer but found outside the company. Clearly, if the former employee can demonstrate that his former employer permitted him to post (or did not prevent him from posting) the information on LinkedIn, that could well defeat the employer's attempt at enforcement.

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[April 2010](#)  
[March 2010](#)  
[February 2010](#)  
[January 2010](#)  
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How, then, does a company prevent this from occurring, especially with the widespread use of LinkedIn and other social media?

Employers should review employment agreements, confidentiality agreements and social media policies to ensure that each one's content is fully coordinated with the others and that they explicitly prohibit employees from including contact information for those individuals the company considers confidential. Specifically, policies and contracts should: a) define confidential information and/or trade secrets, b) make employees aware of the threats social networking sites pose to the company's confidential information, and c) set forth possible disciplinary measures should an employee violate the policy.

Without appropriate policies and contracts, contacts that are included on social networking sites could be found to be in the public domain and thus available to all competitors. Appropriate policies and contracts will make clear that the contact information belongs to the employer - not the employee - and set clear boundaries for the employee's dissemination of the information.

If we can be of assistance on this or any other employment law issue, please do not hesitate to contact us.



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