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How Much Of Our Personal Lives Should Be Under Employer Surveillance?

The latest case of comments made on one's personal time leading to trouble at work comes to us from Flori-duh, my home state. Jerry Buell, a former teacher of the year, allegedly wrote on his Facebook wall, "I'm watching the news, eating dinner, when the story about the New York okaying same sex unions came on and I almost threw up." It was not the kind of vomiting that many little kids do when they get too excited about something, like a trip to Disney World, where their little stomachs get so tied up with anxiety about the amazingness that awaits them that the contents get spilled. Instead, Buell said this because he thinks "same-sex marriages were part of a 'cesspool' and were a 'sin'," reports CNN.

Now the school district is investigating, and Buell has been suspended. Some are cheering the decision for demonstrating the school's commitment to anti-discrimination, while others are lamenting the violation of Buell's right to free speech — especially given that the comment was made on Facebook, not in a classroom.

With more and more of our personal lives being documented via social media, it's increasingly easy for our employers to discover it. Especially as start-ups like Social Intelligence, about which I've written before, make it their business to help schools, hospitals, and other companies do social media background checks on prospective employees and ongoing monitoring of existing ones.

Where do we draw the line on how much our employers have a right to know about us outside of work, or is that line already too blurred to see? Are we always, in some sense, on the job in the digital age?

"Social media is a tool that gives us more insight into job candidates and employees than we've ever had before," says Florida employment lawyer Eugene Pettis, a partner at Haliczzer Pettis & Schwamm. But he warns that employers can still cross lines that will get them into legal trouble. He points to the case of C. Martin Gaskell in Kentucky. Gaskell was up for an administrative position at the University of Kentucky. In Googling him, someone at the university found that he had done lectures on the merits of intelligent design. Though it was unrelated to the job he'd be doing at the university, objections to his anti-evolution views led the university to rescind Gaskell's employment offer. He sued for discrimination based on his religious beliefs. The university settled the case before it could go to trial, paying Gaskell \$125,000.

(Buell could likely make a similar argument if he says that his views on sexuality are religious ones. **Update:** Pettis has this to add: *“We must recognize that there is an ever-vanishing line between work and personal time when it comes to social media. Statements we make in our personal lives have a way of following us into the workplace, particularly when we write them down and share them with others who may have opinions different from our own. While the constitution gives Mr. Buell the right to express his opinions, as a teacher, he also has obligations to his students, the public and the education profession as a whole. Those professional obligations require all teachers to take reasonable efforts to protect their students and colleagues from harassment or discrimination and any oppressive or intimidating environments. When a teacher says something that can have a detrimental impact on the school district or its students, that behavior can result in disciplinary action, even when it occurs outside of the workplace. In this case, both the school district and the Board of Education have rules prohibiting a teacher from discriminating on the basis of sexual orientation, and Mr. Buell’s comments on Facebook can subject him to discipline if he has violated those policies or regulations.”*)

While the idea of schools’ monitoring their teachers’ social media use may be chilling to free speech advocates, there are arguments in its favor. In fact, parents in Nebraska sued their school district for negligent hiring for **not** looking at the MySpace profile of one of its teachers closely enough. In *Marvin v. Bloomfield*, the parents of a 14-year-old girl sued the school after a teacher went to jail for statutory rape for sleeping with their freshman daughter.

“The School [was] asleep at the wheel in terms of monitoring and supervising its employee especially given all the information and signs that were present and promoted by him on his own MySpace page,” says [Brian Jorde, the Marvins’ lawyer](#). “I think individuals such as teachers and child care providers should undergo elevated scrutiny based on the responsibilities and risks that go with the job duties expected of them.”

The Marvins alleged that there was significant sexual content on the teacher’s page, including the fact that his user name there was John “Pecker” Hoffman — when his middle name was not actually “Pecker” — and that he posted photos of himself drinking and “groping” women.

That case was due to go to trial this fall, but also settled. The amount and terms are confidential, says Jorde.

So, again, the question: how much should we be scrutinized outside of work? Your reputation and actions outside of work have always had an influence on your employability, but now that your actions outside of work are transcribed, recorded and archived in a whole new way thanks to social networks like Facebook, does the surveillance become overly chilling?