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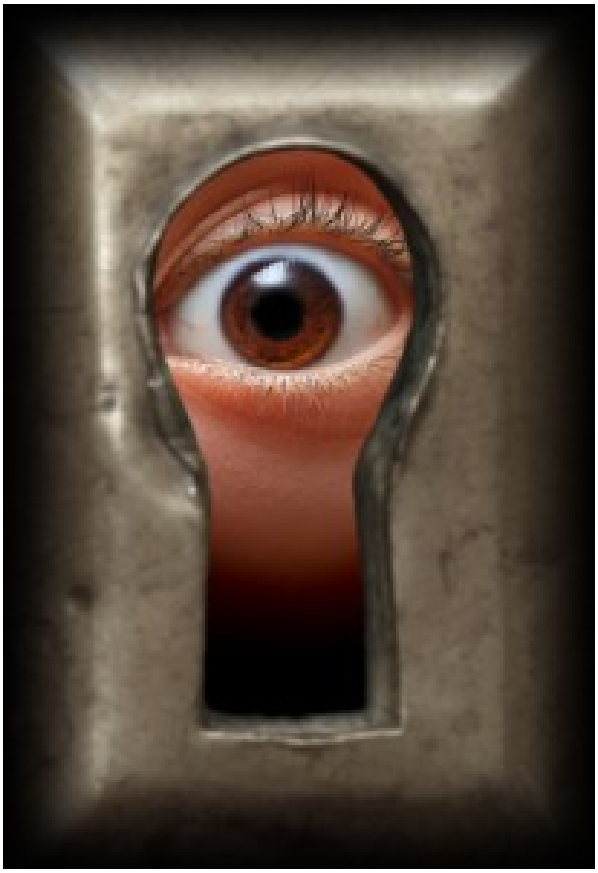

## An Eye on the Future for Public Employers – Surf, Twitter, and Blog in the Workplace

*By Daphne M. Anneet, Esq.*

**Of Special Interest**




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# An Eye on the Future for Public Employers – Surf, Twitter, and Blog in the Workplace

*By Daphne M. Anneet, Esq.*

## I. Introduction

The majority of employers have implemented some sort of policy governing the use of electronic communication systems such as email, portable memory devices, texting, and internet access. However, almost as soon as the first wave of electronic communications policies was in place, the onset of social networking sites such as Facebook, LinkedIn, MySpace, Plaxo, Twitter, and online blogs presented employers with a new set of challenges. With the never-ending stream of new technologies entering the workplace, and the continual blurring of lines between work life and personal life, policies can quickly become out-of-date. These days, many public agencies are recognizing the power of social media and utilize social networking tools to communicate directly with their constituents. To stay ahead of the curve, regular review and updates to policies are essential. This article provides some guidelines and suggestions to assist the policy review process.

## II. Electronic Communications Policy

Recognizing the many opportunities and challenges new technology brings to an organization, the review process should start with a review of the current policy and evaluate whether it reflects the operations, technology and culture of the agency. Through discussions with human resources, IT, operations, and legal, it is important to identify all forms of electronic communications in use and determine whether the current policies adequately address new technologies in the workplace. Today, it is common that employees have access to a variety of technologies such as instant messaging, networks to access personal web-based email, video in the workplace, digital voicemail, blogging, instant messaging, flash drives and other portable storage devices, home computers, personal computers, and remote access. In this process, IT plays a critical role, as the IT department is often the only one that has a clear overview of *all* of the different types of technologies that are at play in a given organization.

What follows are some general guidelines and suggestions.

### A. Best Practices

1. Implement an electronic communications policy that addresses the full range of electronic resources at use in the workplace

2. Set policies that reflect the public agency's culture, and contains clear, comprehensive, and realistic guidelines and parameters

3. Train employees and supervisors on the policies

4. Monitor compliance with the policies

5. Enforce policies fairly and consistently

6. Regularly notify employees of terms of the policies

7. Obtain employees' signed acknowledgments of review and receipt of the policies

8. Regularly review and update policies to respond to new technologies, laws, or specific demands of the workplace

9. Determine whether any of the proposed changes are subject to meet and confer

**B. Recommended Provisions for an Electronic Communications Policy**

Because each public agency has its own unique culture, there is no one -size-fits-all electronic communications policy. However, every employer should, at a minimum, consider including provisions covering the following:

1. **Access:** Set parameters for access to electronic communications systems.

2. **Personal Usage:** Determine whether to permit use of email system, internet surfing, and social networking during work hours, and if so, how much. In making this decision, agencies should ensure that whatever limits are set are limits that the agency will be willing and able to enforce.

3. **Guidelines for Appropriate Usage:** Address the proper and improper use of electronic communications; specifically describe the proper and improper use of electronic communication systems.

4. **Electronic Communications Etiquette:** Set limitations on the content, tone, and style of electronic communications. Provide guidance on email, blogging, and social networking etiquette to maintain professionalism.

5. **Content Limitations:** State that the electronic communication system should not be used to create or distribute offensive, discriminatory, defamatory, or otherwise unlawful messages and must comply with employer's anti-discrimination and diversity policies. Prohibit dissemination of information that violates copyright laws.

6. **Confidentiality:** Provide rules and guidelines on the transmission of confidential information that is sent via an electronic communication system.

7. **Risks of Email Use:** Make sure employees understand the risks of improper use of email and other forms of electronic communication. Remind employees of the ease with which electronic communications are re-circulated, and warn against opening attachments from unknown sources, etc.

8. **Personal Email Usage:** State whether personal emails may be sent and received, and if so, the parameters for such usage.

9. **Use of Personal Electronic Resources for Business Purpose:** Prohibit employees' use of personal web-based email accounts, and other personal forms of electronic communication for business purposes.

10. **No Right of Privacy:** Clearly announce that employees have no right of privacy in any information created, received, stored, or sent through either the employer's electronic communications equipment, or employee's electronic equipment when used for business purposes. Remind employees that the hardware, software, agency issued flashdrives, PDAs, laptops, and all communications transmitted through these systems remain agency property and may be monitored by the employer at any time, without notice to the employee and without the employee's consent.

11. **Employer's Right to Monitor:** On a regular basis, announce the employer's reservation of right to inspect hardware devices issued to employees and to monitor any of its electronic communications systems.

12. **Retention Policy:** Update record retention policies to address all forms of electronic communication and ensure that only electronic communications that constitute business records are maintained.

13. **Internet Usage:** Identify scope of permissible usage of the internet. Prohibit use of internet for illegal purposes.

14. **Blogging:** Adopt a specific provision to address the use of blogging. Define blogging broadly to include all web postings on bulletin boards, social networking sites, chat rooms, etc. Determine whether your agency will issue a blanket prohibition from using agency electronic resources to view or post any blog that is unrelated to work, or whether your agency will permit limited usage. Prohibit employees from disclosing confidential information in any blog. Re-assert that employees are prohibited from using agency electronic resources to publish any discriminatory or defamatory remarks about other employees. Advise employees that when they use social media for personal purposes, they must not imply they are speaking for the agency and should avoid the use of the

agency's email address, logos, or other agency identification.

15. **Video:** Prohibit the use of the agency's electronic resources to view and download video unrelated to work.

16. **Electronic Communications May be Disclosed to Law Enforcement Authorities:** Notify employees that employer may disclose an employee's electronic communications to law enforcement authorities if the employee's activities create a suspicion of criminal conduct.

17. **Enforcement Mechanisms:** Identify the consequences of a violation of the policy, including notification that employee may be subject to disciplinary action, up to, and including termination. Require employees who witness violations of the policy to report such violations.

18. **Employee Acknowledgment:** Require all employees to sign and date an acknowledgment that they have received a copy of the agency's electronic communications policy and that the employee has read, understands, and agrees to adhere to the terms of the policy.

These new technologies are here to stay. The policy review process provides agencies with an opportunity to reconsider whether some personal usage of electronic resources will be permitted, and if so, under what conditions. By implementing policies that are responsive to these new realities, agencies will be in a strong position to maintain control over their systems, harness the power of social benefit, and promote an efficient and positive work environment.

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## PUBLIC LAW

Streets and Highways Code Sec. 10405, setting time periods in which a tax sale is to take place, is not a statute of limitations, but is merely directory. Where defendant utility district obtained a foreclosure judgment that was ultimately reversed on appeal and never realized the benefit of that judgment before it was set aside, defendant was not foreclosed from pursuing remedy of a tax sale; doctrine of election of remedies was inapplicable in this situation. Although a person forfeits standing as a taxpayer-citizen if that person becomes a member of a governing body of a public entity, that person retains standing to sue if she has a personal interest in the outcome of the litigation. Comments made by district counsel on an issue did not give rise to an inference that a secret meeting took place in advance of public meeting to decide the issue. A violation of the Brown Act will not invalidate an action taken by a local agency or legislative body in absence of prejudice. Requested declaratory relief that defendant publicly announce decisions made during closed session and identify person who made motion, seconded, and who voted for and against motion was unnecessary because a legislative body's duties to publicly report any actions taken in closed session and the votes of each member are clearly spelled out by Brown Act. Defendant did not abuse its discretion in declining to grant plaintiff's proposed reassessment request since plaintiff failed to allege a basis for a clear and present duty on the part of defendant to do so. Plaintiff's proffered new evidence purporting to show that defendant failed to comply with law governing special assessments was insufficient to transform her cause of action into a due process claim. Plaintiff could not show a viable cause of action under Proposition 218 where effective date of assessment was before proposition was passed.

*Galbiso v. Orosi Public Utility District*; Fifth District; filed March 3, 2010
http://www.metnews.com/sos.cgi?0310%2FF056506
Cite as F056506

Owner and operator of mobile home park did not establish any error by trial court in ruling that it did not suffer any legally remediable injury from retroactive application of rent control ordinance to date of enactment of prior ordinance

where trial court considered and rejected testimony regarding alleged injury. Money damages are not an appropriate remedy for a violation of the right to petition.

*MHC Financing Limited Partnership Two v. City of Santee*; Fourth District, Div. One; filed March 15, 2010
http://www.metnews.com/sos.cgi?0310%2FD053345
Cite as D053345

Where contract provided contractor was to commence work and negotiate a price at a later date or else contractor would be paid "documented actual cost" of work performed, but contract did not obligate contractor to document its actual costs and custom and practice in public works industry was for negotiated lump sum change orders, contractor was entitled to a trial on contract interpretation. Public Contracts Code Sec. 7105 does not expressly abrogate common law or impact the permissible method of proof for contract damages; a contractor can recover on a modified total cost theory in California.

*Dilingham-Ray Wilson v. City of Los Angeles (CBI Services, Inc.)*; Second District, Div. Two; filed March 18, 2010
http://www.metnews.com/sos.cgi?0310%2FB192900
Cite as 2010 SOS 1469

Although Civil Code Sec. 714(e)(1) prohibits a public entity from willfully delaying the approval of an application to install or use a solar energy system, Sec. 714(f) immunizes a public entity from a private right of action for damages, and plaintiff who brought action against county over its delay in issuing a certificate of property for his farm's solar energy system could not be the prevailing party under Sec. 714(g) for purposes of an attorney fees award.

*Arterberry v. County of San Diego*; Fourth District, Div. One; filed March 23, 2010
http://www.metnews.com/sos.cgi?0310%2FD054699
Cite as 2010 SOS 1505

Education Code Sec. 35330 provides school district immunity to liability for a student's injuries during a field trip on property owned and operated by the district, even if the injured student is not enrolled in that district.

*Sanchez v. San Diego County Office of Education*; Fourth District, Div. One; filed March 23, 2010
http://www.metnews.com/sos.cgi?0310%2FD054560
Cite as D054560

City of Los Angeles ordinance prohibiting persons from soliciting funds at Los Angeles International Airport is valid as a reasonable, content-neutral time, place, and manner restriction of expressive rights to the extent that it prohibits soliciting the immediate receipt of funds.

*International Society for Krishna Consciousness of California, Inc., v. City of Los Angeles*; filed March 25, 2010
http://www.metnews.com/sos.cgi?0310%2FS164272
Cite as 2010 SOS 1570

## ENVIRONMENTAL LAW

Indian tribe's casino development did not constitute a "project" of city—which entered into municipal services agreement with tribe—under the California Environmental Quality Act where the city had no legal authority over the property upon which the casino was to be situated, and agreement by city to support tribe's efforts to acquire the land for the casino and to obtain the requisite approvals from the Bureau of Indian Affairs and the governor did not transform the casino into a "project" triggering an obligation by the city to prepare an environmental impact report; MSA was best understood as a mechanism for funding proposed projects that may be modified or not implemented at all depending upon a number of factors, including CEQA environmental review, where the city did not unconditionally commit itself to making any of the physical changes referenced in the MSA. Requirement in MSA that parties negotiate a fire protection and emergency response agreement after the tribe provided the city with its operational plan were not subject to CEQA review where actual options for placement of a firehouse remained vague. MSA's commitments government transportation improvements were not subject to CEQA review where it was unclear city had agreed to allow tribe to construct traffic improvements.

*Parchester Village Neighborhood Council v. City of Richmond*; First District, Div. One; filed February 24, 2010
http://www.metnews.com/sos.cgi?0310%2FA123859
Cite as 2010 SOS 1020

California Environmental Quality Act does not preclude city from charging resident a fee to appeal planning commission decision to city council.

*Friends of Glendora v. City of Glendora*; Second District, Div. One; filed March 1, 2010
http://www.metnews.com/sos.cgi?0310%2FB215114
Cite as 2010 SOS 1077

Environmental Protection Agency Administrator's interpretation of plaintiff's burden to "demonstrate" permit's non-compliance with the Clean Air Act, as used in 42 U.S.C § 7661d(b)(2), as requiring plaintiff to support his allegations that

aggregation of pollutant-emitting sources with legal reasoning, evidence, and references was not arbitrary or capricious.

*MacClarence v. United States Environmental Protection Agency*; filed March 4, 2010
http://www.metnews.com/sos.cgi?0310%2F07-72756
Cite as 07-72756

Where management indicator species population had not appeared in project area for nearly 20 years and Forest Service's analysis of that species' breeding area conflicted with that of scientific experts, agency's use of a proxy-on-proxy approach—studying study population trends by examining indicator species' habitat—to ensure viability of indicator species did not comply with National Forest Management Act's requirements and did not constitute the requisite "hard look" mandated by the National Environmental Policy Act.

*Native Ecosystems Council v. Tidwell*; filed March 9, 2010
http://www.metnews.com/sos.cgi?0310%2F06-35890
Cite as 06-35890

City did not violate the California Environmental Quality Act when it approved a commercial retail shopping center project without preparing a subsequent or supplemental environmental impact report after the site plan for the project's 795,000 square feet of retail space was changed so that the largest retail space grew from 138,000 square feet to 198,484 square feet because the inclusion of a so-called "supercenter" does not necessarily trigger a requirement that an environmental impact report include an examination of possible urban decay effects.

*Melom v. City of Madera (Zelman Retail Partners, Inc.)*; Fifth District; filed March 24, 2010
http://www.metnews.com/sos.cgi?0310%2FF055024
Cite as 2010 SOS 1592

Trial court did not err in upholding Coastal Commission's order prohibiting festival committee from discharging fireworks over river estuary without obtaining a coastal development permit; fireworks display, while not a "development" in an ordinary sense, fell within the definition under the California Coastal Act where it would result in discharge of solid and chemical waste within a coastal zone.

*Gualala Festivals Committee v. California Coastal Commission*; First District, Div. Three; filed March 25, 2010
http://www.metnews.com/sos.cgi?0310%2FA125614
Cite as 2010 SOS 1599

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## LABOR AND EMPLOYMENT LAW

Under the Employee Commuting Flexibility Act, use of a company vehicle to commute—even if a condition of employment—is not compensable, and district court did not err in dismissing class action by plaintiff seeking compensation for time technicians were employed by company to install alarms in customers' cars and for time spent on preliminary and postliminary activities; district court similarly did not err in holding that conditions limiting employee's use of company vehicle during times in question did not amount to additional legally cognizable work. Employee's off-the-clock activities prior to leaving home—receiving, mapping, and prioritizing jobs and routes for assignment—were related to his commute and presumptively noncompensable; to the extent activities were distinct from commute and related to employee's principal activities, district court did not err in granting summary judgment denying compensation absent any evidence activities took more than a de minimis amount of time to complete. Where record indicated employee's work-related activities after returning home were an integral part of his principal activities and the amount of time required to complete activities was in dispute, district court erred in granting employer summary judgment. Employee was not entitled to compensation for commute time under "continuous workday" doctrine—even if such doctrine were adopted—where preliminary activities were not principal activities or were de minimis, and where employee could use intervening time between completing a job and conducting postliminary activities for his own purposes. District court erred in granting summary judgment for employer on plaintiff's California law claim for compensation for commuting because the "level of the employer's control over its employees" is determinative and there was no dispute that employee was under employer's control while driving company vehicle to first job of the day and on his way home at the end of the day.

*Rutti v. Lojack Corporation, Inc.*; filed March 2, 2010
http://www.metnews.com/sos.cgi?0310%2F07-56599
Cite as 07-56599

Where arbitrator interpreted meet-and-confer provision of memorandum of understanding as requiring parties to consider alternatives to layoff "not expressly addressed in the layoff article," arbitrator did not impermissibly "amend" MOU by ordering reinstatement of employee since such remedy was reasonably related to arbitrator's interpretation of the MOU and was not expressly prohibited by it.

*San Francisco Housing Authority v. SEIU Local 790*; First District, Div. Two; filed March 9, 2010
http://www.metnews.com/sos.cgi?0310%2FA123636
Cite as 2010 SOS 1263

Where donning and doffing of police uniforms and related gear was not required—by law, rule, employer or nature of officers' work—to be performed at employer's premises, time spent doing so was not compensable under the Fair Labor Standards Act and the Portal-to-Portal Act.

*Balmonte v. City of Mesa*; filed March 25, 2010
http://www.metnews.com/sos.cgi?0310%2F08-16206
Cite as 08-16206

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