



THE READY-MIXER



Enriching • Inspiring • Empowering

Virginia Ready-Mixed Concrete Association Newsletter

July 2010

Field Testing Soars with Support from VDOT

By J. Keith Beazley,
Director of Industry Services

The VRMCA ACI Concrete Field Testing Certification has been highly successful in the past year due to great support from VDOT District offices across the Commonwealth. Class and student volumes have increased because the concrete testing must be conducted by an ACI Certified individual. VDOT District personnel have supported VRMCA in acting as Supplemental Examiners where needed.

The number of classes and the number of students in each class has created the need for a larger number of Supplemental Examiners to monitor the examination and to certify knowledge of the proper testing procedures and methods. Support from the VDOT personnel has filled a void during each examination and has enabled the successful completion of each session across the state.



The VDOT Districts participating in VRMCA testing include Hampton Roads, Richmond, Culpepper, Fredericksburg, Lynchburg, Bristol, and the Materials Engineering Headquarters in Richmond. This support has also created a bond and understanding between the concrete industry and the materials sections of VDOT.

Working together to ensure the proper testing of concrete will greatly benefit our industry in the projects and in the specification of the usage of concrete. VRMCA members are greatly benefiting from the establishment of this close working relationship and the understanding and friendships that have developed. 🚚

Summer of Safety Series: Night Pour

The National Ready Mixed Concrete Association has published the latest in its growing array of safety-focused training programs, this time to coincide with its "Summer of Safety" Webinar series. This latest offering, *Safety Series #18: Night Pour Safety for the Ready Mixed Concrete Industry*, is a CD-based PowerPoint presentation with instructor notes designed to teach employees the importance of hazard recognition when it comes to night pours.

Delivering to jobsites during the day is potentially difficult, let alone at night. Avoiding slips, trips and falls as well as dealing with temporary lighting are covered. Excavations are more difficult to detect at night and special emphasis is placed on the "1 to 1 Rule." Finally, a quiz and training documentation form is enclosed to track personnel training.

"These courses were created in conjunction with member company volunteers to ensure maximum training effectiveness," said Doug Rexroad, director of Health, Safety and Environmental at Essroc Ready Mix, Inc. and NRMCA Safety Task Group chairman. "Night pours are an attractive option to reduce traffic congestion, but they also potentially increase the chance for accidents to happen on the jobsite." 🚚

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VRMCA
Virginia Ready-Mixed Concrete Association

Welcome to VRMCA Online
Welcome to the Virginia Ready-Mixed Concrete Association's web site - your online source for information on ready-mixed concrete for design professionals, homeowners and managers of businesses in the industry.

Events
Congratulations to our 2010 Mixer Truck Rodeo winners!
The Virginia Truck Center hosted the 2010 VRMCA Mixer Truck Rodeo on Saturday, April 15. And the winners were...
REGISTRATION FOR THE 2010 VRMCA SPRING CONVENTION IS NOW OPEN!
For more details and registration information, Click HERE.
2009 Fall Convention Presentations
Presentations from the Fall Convention are available for download.
Concrete Workshop Presentations
Presentations from "Building Green with Concrete Workshop", June 4th, 2009, WSSD, Gainesville, Virginia
VRMCA Spring Convention Presentations
Presentations are available from the 2009 Spring Convention held on May 17 - 19, 2009.

ACI & Calendar

ACI Class - Hampton, VA (FULL)	4/20/2010
ACI Class - Hampton, VA (FULL)	4/21/2010
SWCAC Meeting	4/21/2010
ACI Exam - Hampton, VA	4/22/2010
NVCAC- Architectural Conc. w/ Colors and patterns	4/22/2010
Meeting with Va. Tech Bldg. Const Dept.	4/26/2010
ACI Class - Warrenton, VA	5/4/2010

Visit the Virginia Ready-Mixed Concrete Association Website at www.vrmca.com

Business Lays the Foundation in More Ways than One

Grady, Will and Jay McNeely have strong ties to Martha Jefferson Hospital in Charlottesville, VA. Between the three, they've had children born in the hospital, a father treated for cancer, received healthcare themselves and held leadership positions on foundation committees. In addition to the previous mile markers, the bond between the men and the hospital continues to grow stronger each day. Their family business, Allied Concrete, is providing several products to build the new Martha Jefferson Hospital.

"There's a natural inclination to want to help our community hospital," reflects Jay. "We're connected to Martha Jefferson."

"It feels great, knowing that so many of our products have gone into the project," added Grady. "It's wonderful to know that we're going to be able to see and experience what we helped create."

Jay and Grady — brothers — and their cousin Will all became involved with the business at a young age. Growing up they experienced many different aspects of the concrete industry, but between the long hours and manual labor, the work wasn't glamorous. However, with their fathers and grandfather at the reins early on, they learned the importance and value each member of the team can bring to an organization.

Today, the three men are in the driver's seat, and continue to take their grandfather's vision to the next level. The Allied team and Martha Jefferson have enjoyed a lengthy professional history and recognize the similarities between the way they believe business should be done and the way the hospital operates.

"Martha Jefferson is a large organization, but it has a personal feel. It's also clear they value their patients, employees and community partners a great deal and understand each one is important to be a successful organization," shared Will.

Allied Concrete is providing the concrete blocks, ready



Grady McNeely, Will McNeely and Jay McNeely are supplying concrete and bricks for the new hospital and are excited to be a part of the next phase of the Martha Jefferson tradition.

mix concrete and bricks for the new hospital, among other products. The materials are not only serving as the foundation of the actual building, but will also be used to build roads and drainage structures on the 84-acre campus.

In addition to their role in the replacement hospital project, Allied Concrete is also a generous philanthropic supporter of Martha Jefferson Hospital through their commitment to the capital campaign and sponsorship of the Martha Jefferson Golf Classic, which provides annual support for hospital programs and caregivers.

"If we can help provide resources for much needed services and organizations in our community, everyone wins," said Jay.

"We want to support growth in our community, and working with Martha Jefferson is such a rewarding experience, it makes it easy to want to be involved." 🚚

-Reprinted with permission from Martha Jefferson Magazine



For coverage in future issues, please send announcements/press releases and accompanying photographs to marci.malinowski@easterassociates.com or mail to:

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Submissions may be edited for length. Inclusion is not guaranteed and may be excluded due to space.

Tidewater Area Contractors Attend Pervious Course



**By J. Keith Beazley,
Director of Industry Services**

The Hampton Roads Concrete Advisory Council held the NRMCA Pervious Concrete Contractors Certification Course in Virginia on Saturday, July 24th, in Virginia Beach. The course was taught by William Denison, NRMCA Certified Concrete Professional in Concrete

Technology. Bill is a Certified Instructor for the Pervious Concrete Contractors Certification Course. Bill has taught Materials Engineering and Concrete at the Tidewater Community College for 17 years.

The Pervious Concrete Technician Course provided information on Fundamentals of Pervious Concrete, Stormwater Management, Sustainable

Development, Concrete Technology, Concrete Materials, and Design principles, Concrete and Placement and Troubleshooting. The course was well attended by Concrete Contractors, Municipal Engineering Personnel, and Sales Personnel.

A five-year certification will be issued by the NRMCA for successfully passing the examination offered in the classroom session. Steve Kerr, P.E., Solite, was the Administer and conducted the special exam. The placement of pervious Concrete is not required for this level of certification.

The class was presented on Saturday to allow the Contractors a full work week during the busy summer work schedules. The Hampton Roads Council assisting with the exam were Bill Denison, Titan America, Barb Nelson, Titan America, John Lockett, Roanoke Cement, Lee Flemming, Lafarge Cement, and Keith Beazley, VRMCA.

The Hampton Roads Council plan to make the Pervious course an annual event due to successful response from participants. 🚚

SW Council Renews Interest in ICF with Seminar

**By Bob Nablo,
Director of Industry Services**

With residential construction in the doldrums, the SW Council will promote ICF construction by hosting a dinner and seminar for designers at Hotel Roanoke. A sustainability event held the previous year at this landmark hotel proved that the location offers excellent meals and first-class ambiance for events of this type, and the Council wanted to repeat that performance.

The featured speakers were Jon and Pennie Garber, the husband-and-wife owners of Lineage Architects in Verona. Jon is a registered engineer and Pennie is an AIA architect, and together they have successfully designed many residential and commercial projects.

Together they put on a very interesting presentation and are fully capable of



telling listeners why certain sections are designed in specific ways and answering other questions.

The Garbers also will work with any ICF product and any installer. Their work can be seen in many sites throughout the Shenandoah Valley, including the Park 'n

Pool commercial project in Rockbridge County.

Attendees were also able to ask questions and gather information from the VRMCA booth and an ICF wall display set up by High Country Contractors of Roanoke. 🚚

ACI Introduces Comprehensive Concrete and Sustainability Guide

The first-ever comprehensive resource on concrete and sustainability, *The Sustainable Concrete Guide—Strategies and Examples*, provides insight on specific strategies for the best use of concrete in high-performance, long-lasting, green buildings. Included in the guide are case studies, technical data and references, and numerous practices that can be implemented immediately. The guide is divided into three parts:

Part 1 of the guide includes information on “Concrete Basics for Sustainability,” which outlines the uses of concrete as the most widely used building material in the world.

Part 2 of the guide is titled “Considerations for Best Use of Concrete for Sustainable Structures,” and it contains 11 chapters on specific uses of concrete for sustainable structures.

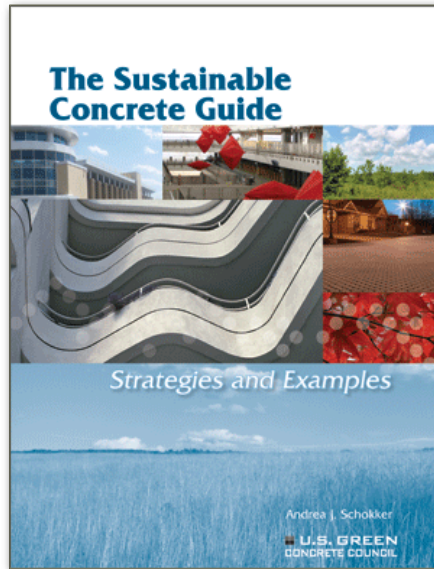
Part 3 of the guide, titled “Beyond Sustainable Rating Systems: Project Profiles,” features 12 specific construction projects throughout the U.S., all of which utilize sustainable concrete practices and techniques. Included are profiles of three specific types of structures: parking structures and parking lots; single-family and multi-family residential structures; and commercial, institutional, and industrial structures.

The book is authored by Andrea J. Schokker, professor and head of the civil engineering department at the University of Minnesota Duluth. Schokker is a member of the Board of Direction for the American Concrete Institute (ACI) and is active in many ACI committees including Joint ACI-ASCE Committee 423, Prestressed Concrete, and a subcommittee of Committee 318, Structural Concrete Building Code. She is the chair of ACI Committee 130, Sustainability of Concrete.

Also an integral part in the creation of the book is the editorial review panel of the U.S. Green Concrete Council. Current ACI president Florian Barth serves as chair of the editorial review panel. Other members include Michael Deane, vice president and chief sustainability officer at Turner Construction Company; Kevin MacDonald, vice president of engineering services at Cemstone; Aris Papadopoulos, CEO of Titan America; Michael Paul, lead structural engineer and senior consultant for Duffield Associates; Richard Stehly, vice president of ACI and principal of American Engineering & Testing; and Wayne Trusty, president of Athena Institute International.

The U.S. Green Concrete Council was established in 2009 with the purpose of disseminating information on sustainable concrete. The organization aims to satisfy the immediate demand for resources on the role of concrete in sustainable buildings and to facilitate the development of additional sustainability-related consensus documents. USGCC is a division of Creative Association Management (CAM), a wholly-owned subsidiary of the American Concrete Institute (ACI). *The Sustainable Concrete Guide—Strategies and Examples* is the first in a series of sustainable concrete guides to be published by USGCC. The second is expected to be available in Fall 2010.

The Sustainable Concrete Guide—Strategies and Examples can be purchased through the ACI website at www.concrete.org/general/USGCC-Book1.htm.



On the Horizon Calendar of Upcoming Events

AUGUST 5, 2010

NVCAC Tilt-Up Concrete Seminar
11:00 AM - 1:30 PM
Arlington, VA

AUGUST 10, 2010

HRCAC Meeting
11:30 AM - 1:00 PM
Holiday Inn Executive Center
5655 Greenwich Road
Virginia Beach, VA

AUGUST 10-12, 2010

ACI Concrete Field Testing Seminar and Examination*
8:30 AM - 1:00 PM
Essex Concrete
Rockville, VA

*PRE-REGISTRATION REQUIRED

AUGUST 11, 2010

BRCAC Meeting
12 Noon - 2:00 PM
Rowe's Family Restaurant
74 Rowe Road
Staunton, VA

AUGUST 12, 2010

NVCAC Leadership Meeting
9:00 AM - 1:30 PM
Winchester, VA

AUGUST 17, 2010

CVCAC Meeting
11:30 AM - 1:00 PM
Meadowbrook Country Club
3700 Cogbill Road
Richmond, VA

AUGUST 18, 2010

SWCAC Meeting
8:00 AM - 9:30 AM
The Roanoker Restaurant
2522 Colonial Avenue Southwest
Roanoke, VA

Please visit the online calendar for an up-to-date list of events.
www.VRMCA.com/calendar

New ABC-Virginia Headquarters a Concrete Showcase



J.J. McCarthy, principal of JJMC LLC, led visitors through the building where he pointed out sustainable elements.



McCarthy pours water over the pervious concrete pavement.



Guests enjoy a crab feast and live music.

**By Hessam Nabavi,
Director of Industry Services**

What better way to celebrate the Grand Opening of the newly built Associated Builders and Contractors (ABC) Virginia Headquarters and Training Facility than having a crab feast with live music, a cornhole board competition and tours of the new building. On July 15, more than four hundred people from the design and construction industry attended the event to network and experience this concrete project which seeks to achieve LEED Gold Certification.

This project showcases concrete, with concrete specified and used in a variety of applications, including tilt-up concrete construction, stamped concrete, polished concrete floors, 28,070 sq. ft. of pervious concrete pavement and 30,213 sq. ft. of conventional concrete pavement.

Concrete contributions toward achieving LEED Certification for this project are as follows:

Sustainable Sites:

- Credit 6.2 Stormwater Design, Quality Control, (Pervious Concrete)
- Credit 7.1 Heat Island Effect, Non-Roof, (Pervious Concrete)

Materials & Resources:

- Credit 2.1 Construction Waste Management, Divert 50% from Disposal, (Waste Concrete from the Site)
- Credit 2.2 Construction Waste Management, Divert 75% from Disposal, (Waste Concrete from the Site)
- Credit 4.1 Recycled Content, 10% (post-consumer + ½ pre-consumer), (Concrete & Slag Cement)
- Credit 4.2 Recycled Content, 20% (post-consumer + ½ pre-consumer), (Concrete & Slag Cement)
- Credit 5.1 Regional Materials, 10% Extracted, Processed & Manufactured Regionally, (Concrete & Slag Cement)
- Credit 5.2 Regional Materials, 20% Extracted, Processed & Manufactured Regionally, (Concrete & Slag Cement)

After the ribbon cutting ceremony, J.J. McCarthy, principal of JJMC LLC (the LEED consulting firm), and Emily Prince, project manager with BE & K Building Group gave a detailed tour of the site and building. Both individuals have had a tremendous role in monitoring the design, construction and LEED certification process of this project. The tour started with a quick demonstration of pouring water over pervious concrete pavement. During the tour, J.J. and Emily pointed out many design elements that have contributed to the sustainability of this project and ultimately to LEED Gold Certification. *(To learn more about these design elements, please see Quick Facts about New ABC-VA Headquarters on page 5.)*

This project represents the construction industry's commitments to promoting sustainable design. The event not only offered an evening of fun for everyone but it also educated guests on sustainable design and the important role that concrete can play in that design.

ABC-Virginia Headquarters Quick Facts



- The building has a water use reduction of about 44%.
- The building has an energy use reduction of about 17%.
- Light fixtures are designed to reduce light pollution by not allowing light to leak off the property or shine up into the night sky.
- There are no storm drain inlets or storm drains.
- There is no costly underground water quality structure.
- There are no curbs and gutters required for storm water control, just for traffic control.
- There is no irrigation system used.
- The plants are native and adaptive to the region.
- Mulch is also used in areas to reduce the need for water.
- Pervious concrete pavement is used, which allows the water to pass through the concrete and drain to the floodplain.
- Sun shields and masonry piers are used around the windows to help reduce solar heat gain.
- To encourage alternative transportation methods such as carpooling and alternative fuel vehicles, preferred parking is provided adjacent to the entrances of the building.
- To encourage bicycling, a bike rack and showering facilities are provided.
- Recessed entrance mats are used to reduce the amount of shoe contaminants entering the building.
- The reception desk countertop and floor incorporate recycled glass with cement, making it a green product through the use of recycled materials.
- A glass wall is used to help introduce natural light into the board room.
- Bamboo flooring is used as a rapidly renewable product.
- LED accent lighting is used to help reduce energy cost.
- The copy room is a sealed room that has all the air exhausted directly out of the building to prevent toner dust and other contaminants from remaining in the building.
- The lights are controlled by motion sensors that will turn the lights off when the room is unoccupied.
- Bamboo cabinets are used in the kitchen as a rapidly renewable alternative to wood.
- Energy Star appliances are used in the kitchen and are in the top 25% of energy efficient equipment for its category.
- The carpet is green due to having very low VOC emissions for healthy air.
- Recycled glass terrazzo flooring is used.
- All of the large rooms have CO2 sensors which monitor carbon dioxide levels and increases the amount of fresh air entering the room as the occupant load increases. This reduces the use of energy by limiting the amount of fresh air being conditioned.
- In the class rooms, floors are a polished sealed concrete with a black aggregate, and because carpet or other flooring is not used, valuable material resources are not being depleted and contaminants are not trapped in the flooring.
- Lights throughout the building are T-5 energy efficient lamps and can use up to 40% less energy than typical lights.
- The toilets are dual flush. They use 1.1 gallons per flush for liquid waste and 1.6 gallons per flush for solid waste. Signage informs users how to operate the flush (up for 1 and down for 2).
- The faucets are operated by motion sensors and use only .5 gallon per minute flow rate.
- Waterless urinals in the men's rest rooms uses no water by utilizing oil that is less dense, allowing the liquid waste to pass through it.
- Skylights are used throughout the lab area and allow natural light to illuminate the room and reduce the amount of artificial light required.
- The floor has a highly reflective low VOC coating that helps reflect the natural light in the room.
- On the roof is an evacuated tube hot water heater that uses the solar energy of the sun to heat the water.
- The roofing system is a white TPO which reflects solar heat away for the building as compared to a traditional black roof which helps to reduce the heat island effect.



NRMCA Testifies Before the House

On July 22, 2010, National Ready Mixed Concrete Association President Robert Garbini testified before Congress on what he called the negative impact of a proposed Environmental Protection Agency (EPA) rule on the use and disposal of fly ash. Garbini made his remarks before the House Small Business Subcommittee on Rural Development, Entrepreneurship and Trade, asserting that an EPA plan to classify fly ash as a hazardous waste material and create a comprehensive federal management and disposal system would have a significant economic impact on ready mixed concrete producers, especially small businesses, across the U.S. in addition to making the use of fly ash in the production of concrete much more onerous.

"The ready mixed concrete industry is the largest beneficial user of fly ash," testified Garbini. "The use of fly ash in concrete is widespread and has been for years. In 2008 alone, the concrete industry used 15.8 million tons of fly ash in the manufacture of concrete; fly ash is by far the most widely used supplementary cementitious material."

He told subcommittee members that the environmental benefits of using fly ash in concrete results in longer lasting structures and reduced amounts of waste materials sent to landfills, raw materials extracted, energy required for production and air emissions, including carbon dioxide. The overall carbon footprint of ready mixed concrete containing fly ash is considerably reduced and it is an important factor supporting sustainable construction practices, Garbini added.

Garbini's appearance before the subcommittee was prompted by last month's EPA proposed rule on the classification of coal combustion residuals (CCRs), which includes fly ash. The rule seeks public comment on two options: the first option classifies CCRs bound for disposal under Subtitle C of the Resource Conservation and Recovery Act (RCRA) that essentially establishes this material as a hazardous waste (called "special waste" in the proposed rule) and creates a comprehensive program of federally

enforceable requirements for management and disposal. The second option would allow all CCRs to maintain the current exemption from Subtitle C requirements and instead use EPA's Subtitle D to set performance standards for CCR impoundments and waste management facilities; it would be enforced primarily through state regulatory agencies and citizen suits. Under both options, CCRs diverted for beneficial use, such as fly ash for use in concrete, is encouraged by EPA and exempt from new regulations. EPA has clearly stated that it wants to choose one of the two options and does not want the status quo which it is convinced adds to health risks.

The hearing on Capitol Hill, technically called a hearing on Coal Combustion Byproducts (CCBs): Potential Impact of a Hazardous Waste Designation on Small Businesses in the Recycling Industry, saw NRMCA forcefully advocate that the Subtitle C designation for disposal-bound fly ash would lead to increased ready mix production costs, liability issues, stricter state laws for beneficial use and the potential elimination of fly ash used in concrete.

"If a concrete producer continues to use fly ash despite the risks, it will



"The use of fly ash in concrete is widespread and has been for years. In 2008 alone, the concrete industry used 15.8 million tons of fly ash in the manufacture of concrete; fly ash is by far the most widely-used supplementary cementitious material."

likely pay more for the fly ash since both EPA and the electric utilities have suggested the additional cost for disposal will be passed on to consumers, including concrete producers," Garbini said. "The industry is also averse to taking risks due to potential liability of handling a labeled hazardous waste and therefore may choose to no longer use fly ash."

"We also believe that many states will establish new laws that further limit the beneficial use of fly ash. For example, the state of Maryland, in a recent proposed rule, requires any product containing fly ash to be disposed of in a facility authorized to accept fly ash. If the EPA declares fly ash disposal as Subtitle C, then states may change their regulations to force concrete crushed after its service life from demolition of buildings and pavements, or from waste stream of new construction, to be handled in this manner."

"Finally, it has taken several decades of education to convince engineers

and architects to specify fly ash in concrete. We suspect that the stigma and fear of liability will drive specifying engineers, architects and end users to disallow the use of fly ash in concrete," continued Garbini.

In conclusion, he said that NRMCA is surveying its membership to get a broader view of possible implications and noted that the Association has asked EPA officials to extend the comment period by 120 days to provide ample time for Association members to complete the survey and for NRMCA to then analyze survey responses. 🚚

Cool Roofs Lead to Cooler Cities



Roofs and road pavement cover 50 to 65 percent of urban areas. Because they absorb so much heat, dark-colored roofs and roadways create what is called the “urban heat island effect,” where a city is significantly warmer than its surrounding rural areas. Light colored roofs or “cool roofs” significantly reduce the heat island effect and improve air quality by reducing emissions. This is because lighter-colored roofing surfaces reflect more of the sun’s heat, which helps to improve building efficiency by reducing cooling costs and offsetting carbon emissions. A recent study by researchers at Lawrence Berkeley National Laboratory found that using cool roofs and cool pavements in cities around the world can help reduce the demand for air conditioning, cool entire cities, and potentially cancel the heating effect of up to two years of worldwide carbon dioxide emissions.


Most importantly, cool roofs can help homes and businesses save significantly on air conditioning bills. Remember, cool roofs typically cost the same or less than other traditional roofing products, often making it a no-brainer to select cool roof products when it comes time to replace your roof or when building a new home – especially if you live in a warm climate.

As part of the effort to move towards a more sustainable future, Secretary Chu has directed all DOE offices to install cool roofs, whenever cost effective over the lifetime of the roof, when constructing new roofs or replacing old ones at DOE facilities. With cool roofs, these federal buildings will consume less energy, offset additional carbon emissions, and save taxpayers money.

“Cool roofs are one of the quickest and lowest cost ways we can reduce our global

carbon emissions and begin the hard work of slowing climate change,” said Secretary Chu. “By demonstrating the benefits of cool roofs on our facilities, the federal government can lead the nation toward more sustainable building practices, while reducing the federal carbon footprint and saving money for taxpayers.”

The Secretary has also issued a letter to the heads of other federal agencies, encouraging them to take similar steps at their facilities. To assist in their efforts, DOE has released a document detailing the Guidelines for Selecting Cool Roofs. This document is a strong starting point for anyone who is considering implementing a cool roof, at both the residential and commercial level and may be downloaded at www.doe.gov.

You can also find information about Energy Star cool roofing products on EnergyStar.gov. 



Post and view job opportunities online!
www.VRMCA.com

Social Networking: The New Litigation Minefield for Employers



By *John G. Kruchko*
and *Kevin B. McCoy**

Over the past few years, the internet phenomenon known as “social networking” has taken hold as a widely accepted social and professional custom. Many companies now have Facebook or Wiki accounts. Business professionals join networking sites such as LinkedIn, or they join Blogs that are devoted to their areas of professional expertise or personal interest. More and more, employers are using such sites as recruiting and vetting tools to find and evaluate potential job candidates. While there may have been “nay sayers” at the outset, it has become crystal clear that “social networking,” for better or worse is here to stay.

That reality presents new challenges for employers. Employment practices liability for employers is typically communications-based. That is, “Manager John” took an action, wrote a letter, made a statement, denied a request for leave, or otherwise “communicated” in a manner that exposed the company to potential liability for discrimination, retaliation, or other unlawful treatment of an employee.

Social networking has significantly expanded individuals’ ability to “communicate.” By doing so, social networking has created new and uncharted sources of employer liability.

Social Networking Affects ALL Employers

Let’s first dispel a common misconception that social networking is not an issue for employers with relatively few “deskbound” employees. In other words, companies (particularly smaller ones) in which only the top management utilizes internet-capable computers at work need not pay much attention to the social networking phenomenon. As the theory goes, “Our factory workers and truck drivers don’t have work computers, so we don’t really have to worry about them being on the internet.” That rationale is simply wrong, and it misperceives the potential sources of liability that employers face from social networking.

Many statutes provide protection from employment discrimination (Title VII of the Civil Rights Act, the Family and Medical Leave Act, the National Labor Relations Act, the Americans with

Disabilities Act, etc.). However, none of these statutes restricts the liability-inducing conduct or communication to the employer’s place of business or to only those hours spent working. Conduct and communication can be “discriminatory” in the break room at 10:00 a.m. on a Tuesday, or it can be discriminatory in a restaurant at 11:00 p.m. on a Saturday. Overlooked by many employers is the fact that their employees (regardless of their skill level or job title) almost universally have computer access at home or carry cell phones or PDA’s with internet access that will allow them to “tweet,” “post,” “chat,” or “e-mail” at any time of the day or night and from any location around the globe. In short, it makes absolutely no difference whether or not your employees are provided internet access at work.

Potential Bases of Employer Liability

The law always lags behind more fast-moving societal changes, and that is certainly the case here. There are almost no laws regulating social media, employees’ access to it, or employers’ liability stemming from it. For now, the best employers can do is to understand and, where possible, take precautions to guard against the myriad of liability issues raised by social networking, some of which are discussed in more detail below.

1. WHISTLEBLOWER LIABILITY

Although Sarbanes Oxley (“SOX”) is the most widely recognized “whistle-blower” law, the truth is that whistleblower protections are simply anti-retaliation provisions by another name. Virtually all of the federal anti-discrimination laws and a large number of state laws include anti-retaliation or whistleblowing provisions that protect employees who complain about their work environment.

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Thus, an employee who complains in a Blog about what he perceives to be discriminatory practices by his employer may be protected from discipline or discharge—even if the employee is mistaken about some of the pertinent facts.

2. DISCRIMINATION AND HARASSMENT

Without a geographic boundary to the workplace, social networking has extended the reach of both federal and state anti-discrimination laws. The comments a supervisor makes in “cyberspace” from his home are now just as problematic as a comment made in the lunch room at work.

For example, a supervisor who “friends” subordinates on Facebook and then sends them lewd or unsavory messages or pictures could just as easily be guilty of sexual harassment as the supervisor who makes sexually explicit comments at work. Or supervisors who post online questionable comments or statements about their subordinates, even if not sent directly to the employee, may be a source of liability if the comments somehow “get back to” the employee who was the subject of the supervisor’s comments.

3. DEFAMATION LIABILITY

Defamation is the publication of knowingly false information (either in written or verbal form) about another in-

dividual or organization. Social networking is rife with opportunity to criticize and condemn colleagues, supervisors, subordinates, and organizations. Under some circumstances, an employee’s defamatory statements can expose the employer to vicarious liability from the victim – such as a supervisor’s false, negative comments about a subordinate. But even if the employer bears no legal liability for the comments, such efforts can destroy worker morale and generally wreak havoc amongst a company’s workforce.

4. PUBLICIZING COMPANY INFORMATION

With the click of a mouse, employees (and ex-employees) can share a company’s trade secrets or other confidential and proprietary information without the company ever knowing. An ex-employee seeking to exact a bit of revenge for his untimely termination, for example, may seek to publicize otherwise private information about the company or a client, both of which can expose the company to liability.

In addition, an employee need not release secret information in order to expose the company to liability; simply advocating for the company can be a source of liability. Last fall, the Federal Trade Commission issued new regulations governing an employee’s endorsement of his company or its products.

Under the new regulations, any time an employee endorses his employer’s product or service, he must disclose the fact that he is an employee of the company. If he fails to do so, both the employee and the company can face liability.

Recommendations for Employers

With the onrush of the social media phenomenon, employers must act quickly to address the expanding sources of liability. As a first step, all employers should amend their handbooks or work policies to reflect the fact that employees have no expectation of or right to privacy in their workplace communications or when using employer-owned devices (such as computers, Blackberrys, or cell phones).

Next, create a comprehensive social networking policy that clearly informs employees of the scope of their responsibilities and restrictions when using social media, both at work and at home.

Thirdly, educate employees about how their comments and activity away from work can lead to legal liability for both them as well as the company. While these steps cannot completely insulate a company from liability, it offers employers the best opportunity to avoid having an employee’s careless comments spawn preventable lawsuits to which the company may have little defense. 🚚

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