



LINKEDIN: TO BE OR NOT TO BE LINKED, THAT IS THE QUESTION

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With more than 364 million users, the business networking site LinkedIn can provide access to information that was previously less readily available, regarding a worker's professional relationships, as well as his/her role and responsibilities within the context of a business.

Several executives wonder to what extent such information published by their employees about themselves – or collected and accumulated on LinkedIn with regard to customers and suppliers (and those individuals who provide such services) within the context of their work – may constitute information that they would rather have kept from being publicized to preserve its confidentiality, and possibly its use by a former employee after their departure.

Among the situations that may pose risks or drawbacks, one might consider the following:

- **Access by third parties to an employee's LinkedIn contacts:** As we know, a first-degree connection between two LinkedIn users allows both individuals to browse each other's 1st degree contacts.
- **Loss of control over the management of a group: the creator of a group:** on a social network site such as LinkedIn is de facto provided with a practically inalienable capacity to carry out the management of the group, including the ability to send forwarded messages via email to the members of this group even after leaving his employment oftentimes this group will have been originally launched for the benefit of an employer and with the employer's support.
- **The immediate change of employment notice:** as soon as a user on LinkedIn indicates a change of occupation or employer, all users with whom they are connected in the 1st degree are likely to be notified automatically.

A company has no interest in having the names and addresses of companies and individuals with whom its employees develop relationships and interact within the context of their work, be made accessible to competing companies. Similarly, a

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company can derive no benefit in losing control over a LinkedIn group previously run by an employee within the context of their work, nor in having many of its customers and suppliers notified of the identity of the competitor for which a former employee will work in the days or weeks following their departure.

Nonetheless, for information of this sort to be regarded as confidential and proprietary to a company and for it to remain as such, not many options are available under the laws. Those wishing to preserve this confidentiality and exclusivity must be proactive and contractually oblige those producing and using such information to preserve its confidentiality and to surrender this information at the end of their employment or business relationship.

Here are some options to consider:

- Appropriate confidentiality, non-competition and non-solicitation clauses being included in the employment contract;
- A company policy dealing with what an employee can and cannot do on LinkedIn in the context of their employment (including account settings) and dealing with the ownership of data resulting from such use;
- Communication of this policy to the employees;
- Corporate practices consistent with this policy;
- The right to obtain, via downloading and review, a copy of an employee's LinkedIn connections data, following their departure from the company and, as the case may be, to eventually require the deletion of the data that should not be there.

In the absence of adequate resources, a company may find it difficult to keep certain information confidential and proprietary. In Quebec, the company may still have certain recourses for exemple:

1. An employee's general obligation of loyalty under the Civil Code of Québec and obligation to not use information of a confidential nature, obtained when carrying on or in the course of his/her work; this obligation remains in force for a reasonable period of time following a the termination of an employment contract.

2. In certain instances, compilations of data may be recognized as works under the Copyright Act (i.e., when resulting from the selection or arrangement of data that is derived from the skill and judgment of the author) and how the employer is deemed to be the first owner of a copyrighted work when it is executed in the course of the author's employment.

Better safe than sorry

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The proliferation of online services and the working trend where an employer allows (or requires) that the employee uses his own electronic devices for work purposes, undermine the control a company has on the information it may wish to keep confidential and exclusive. For this reason, as in many situations, prevention through development of best practices is essential in reducing related risks.



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