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Employment in the Virtual World

The increasing popularity in the use of weblogs and social networking sites, such as Facebook and Bebo, presents challenges for employers in respect of the legal implications this may bring to the workplace. These implications extend far beyond the genuine concern of lost working hours and the knock on effect on productivity.

The online social networking sites provide a medium through which office banter and other comments made by employees can reach a much wider and diverse audience. This means that an employer must be alert to and take steps to ensure that it is not the subject of unnecessary legal actions deriving from the online activities of its employees.

The main areas to consider in respect of legal risks for employers are:

- The risk of liability in relation to derogatory comments made about employees which could lead to potential claims including harassment and discrimination;
- The publication of defamatory comments about competitors or material which could have a damaging effect on the reputation of the employer;
- The inadvertent disclosure of confidential information;
- The creation of a hostile working environment when candid remarks offend a fellow employee.

Employers may be tempted to think that the way forward is to rigorously police their employees by monitoring their activities. However, any action must be lawful and employees' privacy rights must be taken into account to avoid falling foul of the extensive laws that exist to protect them. The key considerations being the provisions of the Human Rights Act 1998, the Data Protection Act 1998 and legislation relating to the interception of communications.

Employees might wrongly assume that activity carried out in their own time is not something that can legitimately be the concern of their employer. However, tribunals have often upheld dismissals caused by the conduct of employees out of working hours.

A practical step an employer can take to reduce the risk is to restrict access to the internet or to block access to certain websites during working hours. This should then be supported with a detailed computer use policy which sets the boundaries for weblogging and the use of social networking sites, covering issues such as reasonable usage and the posting of inappropriate material about the company, other employees or in general. The employer must then ensure that this is well communicated to employees so that they are clear as to their position and what is expected of them. Sometimes it may even be necessary to explain to staff that their employment duties do not suspend the minute they clock off. Finally, the employer should ensure that all policies and procedures, such as the IT policy and disciplinary procedure, are kept up to date with advances in technology.

We mean business



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