

Social media – the employment issues

The popularity of social media sites such as Facebook, LinkedIn and Twitter is ever increasing with new initiatives joining the virtual world on a regular basis

The principal function of most social media sites is to provide links to users and publish those links online for others to see. Whilst some companies have come to embrace these sites for marketing and PR purposes, an employee's use of social media, both inside and outside of the workplace, remains a double-edged sword.

Advantages

Social media provide useful marketing tools to raise the profile of a business within the public domain expanding the remit in which to develop business opportunities. They can help develop solidarity between employees and, provided an employer acts with caution, they may also serve to provide information about candidates on recruitment and evidence during disciplinary procedures.

Risks

There are a number of risks for employers associated with an employee's use of social media sites, such as:

- Decreased productivity during working hours
- The disclosure of confidential and proprietary information
- Vicarious liability for discrimination
- Reputational damage

Business use

If an employee is required or encouraged to use social media for marketing, recruiting or other business purposes, the employer should set clear guidelines for this use from the outset. This should include commentary and guidance on issues such as: postings/communications reflecting an employee's level of expertise and knowledge, identification of association with employer, adding value to the business, rectifying errors, maintaining reputation and credibility, being respectful at all times, adhering to company policies and procedures, protecting confidential information and details of the possible consequences for an employee if they fail to observe the guidelines.

Personal use

1 Use at work

Employers are perfectly entitled to manage the extent of an employee's personal use of the company's computer equipment and internet connections. One option would therefore be to adopt a complete bar approach by blocking access to all or certain specified social media sites.

Alternatively, an employer may allow access at work at specific times, such as during lunch breaks. In these circumstances, it is important for employers to identify and to educate staff on the applicable boundaries for use.

Employers are best advised to have in place a clear formal policy on internet usage. Disciplining staff for using social media for personal use during working hours is possible and will not necessarily be unreasonable in the absence of a policy. Nevertheless, having a clear policy and procedure in place reduces the risk of unfairness in such proceedings.

Whilst blocking access or limiting access addresses the "loss of productivity" issue, it does not resolve the risks associated with activities outside the workplace or using personal resources, such as smartphones.

What can employers therefore do to protect themselves from the potential risks associated with an employee's use of social media?

2 Use generally

Employers should look at introducing a policy on the appropriate use of social media which is consistent with both their business culture and approach to social technologies. Although such a policy will not create an absolute shield from legal risk, it will assist to cushion the employer from potential exposure.

The "social media" policy should define very clearly the employer's expectations regarding an employee's use of social media, both on and off the job. However, disciplinary action for breach of this policy outside of working hours will only be justified where the breach risks some real kind of damage to the employer (such as reputational damage, liability for discrimination or the dissemination of confidential information).

The expectations of employers will vary between companies, but the policy should make it clear that employees must comply at all times with their terms and conditions of employment and any pre-existing company policies, for example, terms relating to confidential information and trade secrets, terms relating to intellectual property, policies on equal opportunities, bullying and harassment, ethics and standards of conduct. Employers may also like to include a reminder that any reference to the company should include a disclaimer stating that any opinions expressed are the employee's own and do not belong to the company.

Social media sites such as LinkedIn often allow employees to put clients as their contacts. If



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the employee maintains this connection after leaving the company they are effectively taking the employer's client database with them. The social media policy will therefore need to address how the employer will go about retrieving those contacts and stop employees from using those contacts after they leave.

Damaging material

If an employee's use of social media results in postings or comments that are defamatory of the employer, the employer may bring a defamation action. Whether the statements are defamatory or potentially damaging to the reputation of the employer, the host website can be contacted to request that the offending pages are taken down. If comments are tending to damage the employer's reputation or bring the company into disrepute, these can be treated as misconduct offences for which disciplinary action may be appropriate. The appropriateness of an employer's response in such situations will depend in part on whether the behaviours are covered in any company policy.

Conclusion

Employers should take steps to protect themselves from the potential risks associated with an employee's use of social media both on and off the job, whether using company property or personal property, by introducing a social media policy. This should be carefully drafted to ensure that it meets the company's own expectations and reflects its approach to social technologies. However, legal advice will be necessary to ensure that the employer does not infringe an employee's rights, including human rights such as the right to privacy and the right to freedom of expression. Taking an unreasonable stance could also risk constructive unfair dismissal claims. The important thing is to strike a balance between the employee's freedom to use social media appropriately and the employer's desire to protect their business interests.

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