

EMPLOYMENT LAW DEPARTMENT

Social Media in the Workplace

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1. When should an employer have a Social Media Policy or can the use of sites such as Facebook and Twitter just be banned during working hours?

An employer can impose a blanket ban on certain types of websites, but this should be communicated to employees. However, there are benefits to introducing a written policy that deals with employees' use of such sites, both inside and outside working hours, which makes it clear what is expected of staff.

The introduction of such policies is recommended because legal liability can arise against a company even by virtue of an employee's personal use of such websites. A written policy will help if it becomes necessary to take disciplinary action against an employee arising out of their personal postings. If an employee is dismissed because of some defamatory or disparaging comment they have made on their personal Facebook account, for example, having a Social Media Policy will be crucially important if the case ends up in a Tribunal.

2. What kind of areas should be covered in the Social Media Policy?

It depends on whether employees need to use social media for work purposes. Presuming that they do not, the policy can include a restriction on employees using company equipment to access such sites, as well as a statement making it clear that disciplinary action may be taken in relation to personal use where that use breaches the policy. The policy should prohibit any negative comments about the company, its employees, customers and business contacts and should also prohibit harassment and bullying of other employees and prohibit discrimination. The policy can also be linked to the company's Anti-Harassment and Bullying/Equal Opportunities Policy.

A lot of employees don't necessarily understand that their social media postings may reflect (badly) on their employer so the policy should make this clear. The policy might also prevent employees from stating where they work or at least require them to state in any postings that the views expressed are their own and do not reflect the views of the company.

Employers also need to ensure that employees are not disclosing or using confidential information of the company and warn them of the consequences of doing so.

3. Can employees' private postings be monitored?

It is possible to monitor an employee's internet use whilst they are at work, especially if the employer is looking to prevent liability arising against the company, for example for harassment, discrimination or defamation. Monitoring their personal postings outside of work is more tricky and is usually not recommended as a matter of course. However, if a disparaging comment on a social media site is brought to an employer's attention by another employee or even a customer, it will be necessary to have a policy in place that sets out how such comments will be dealt with.

4. Is it appropriate to look at Facebook as part of a recruitment process?

It is becoming more common for employers to look at candidates' online profiles, be it on Facebook, Twitter or Linked-In, and to consider what they find when determining whether to offer someone a job. Before this is done, it will be important to be aware of whether the Information Commissioner's Office has updated its position on the use of on-line profiles to inform recruitment decisions, as well as of any concerns under the Data Protection Act.

Employers should give the candidate the opportunity to comment on the accuracy of the information found online and candidates should be told that as part of the vetting process the employer intends to look at such profiles. Just because information is on the internet, however, don't assume that person has lost their right to privacy.

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