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How to manage your online reputation

The separation between work and your personal life used to be simple. Then came the internet and social media. Facebook, LinkedIn, Snapchat and AudioBoo have changed not only the way we communicate socially but also with whom.

If you set up the accounts properly, Facebook and Twitter are surely private? Therefore, you would think that we can say what we like. Not so.

Employee Tribunal Division

Employees can be fairly dismissed for comments they make on a social networking site, even if they access the site on their own personal computer or smartphone, outside working hours, and their profile page does not state where they work. The test is whether their conduct relates to their employment relationship with their employer.

There have been a series of UK employment tribunal decisions over the past few years dealing with social media and employers, particularly as a result of employees acting in a way that would bring their employer into disrepute, or which could damage its reputation. To avoid uncertainty employers should have an effective social media policy which sets out clearly, with examples, what behaviour outside work they consider is and is not acceptable, to ensure its reputation is protected.

Policy

The importance of having a policy can be illustrated by a case in the UK, *Witham vs Club24 Ltd (t/a Ventura) ET/1810462/10*. In this case, the employee was a team leader for Skoda Customer Services (part of the Volkswagen group) and posted a comment on her Facebook page stating: “...*I think I work in a nursery, and I do not mean working with plants...*”.

There followed a conversation with friends over Facebook and two of the employee's colleagues (who were her friends on Facebook) reported the conversation to management.

The employer was concerned about the detrimental impact of the employee's comments and its relationship with Volkswagen. However, it could not identify a breach of the relevant sections of any social media or disciplinary policy and, instead, alleged that the conduct constituted a serious breach of confidence. To support this, it relied on a provision in the Staff Handbook which stated that employees must not disclose confidential information to third parties. However, an Employment Tribunal found there was no breach of confidence and the employer was enforcing the wrong category of misconduct. If the employer had had an effective social media policy, the case might have ended very differently.

Set out appropriate grievance procedures

A shift manager's dismissal for gross misconduct was found to be fair after she made inappropriate comments about customers on her Facebook page at work. The employee argued, in mitigation, that she was angry and had been upset by abusive customers. The Tribunal, however, said the employer had provided a hotline for employees to seek the advice of an experienced manager if they felt the stress, it was open to the employee to make use of this.

Employers may wish to stress that if employees have any issues at work, they must raise them through a grievance procedure, or other forms, such as an employee helpline, and that ranting on social media is not acceptable.

Religious and Political Views

One of the most difficult areas to monitor and regulate is employees expressing religious or political views, or joining groups which the employer feels could harm its reputation and relationships with clients.

In the case *Smith vs Trafford Housing Trust [2012] EWHC 3221*, a Christian employee read a news article on BBC website headed: "Gay Church "Marriages" Set to Get the Go Ahead". Thinking the article might interest some of his Christian friends, he posted a link on his Facebook wall, together with a comment, "an equality too far". Following comments from others, he posted, "I don't understand why people who have no faith or don't believe in Christ, would want to get hitched in church. The bible is quite specific that marriage is for men and women. If the state wants to offer civil marriage to the same sex then that is up to the state; but the state shouldn't impose its [sit] rules on places of faith and conscience."

The Housing Trust maintained the comments were in breach of its code of conduct for its employees and demoted the Claimant for gross misconduct. One part of the code of conduct relied on by the Trust stated: "the Trust is a non-political, non-denominational organisation; employees should not attempt to promote their political or religious views. Employees are expected to respect the customs and culture of any customers, their friends and family and colleagues.

The High Court, in a cautious judgment, found the prohibition of promoting political or religious views lay very much at the work-related end spectrum because, otherwise, it could interfere with the employees' right of freedom of expression and religious and political beliefs. It determined that the employees Facebook page was not sufficiently work related to attract the work prohibition against promoting religious or political beliefs. This was the case, even though 45 of his work colleagues were Facebook friends, and he had identified himself as a manager of the Trust.

The Court said the employees Facebook page was inherently non-work related, as it was used to express his personal views about matters which had nothing to do with work. It concluded that the prohibition of promoting political and religious views did not, as a matter of interpretation and application, extend to his Facebook wall.

Employers should be advised to give careful thought in any social media policy to how the differentiate between an employee's personal view that other employees, client and the

business may disagree with, and those which are genuinely detrimental to organisation's reputation.

Bullying and Harassment

An employer is vicariously liable for the acts of its employees that incur in the course of the employment. This means that it may be liable for bullying and harassment that occur on social media sites. In a 2012 case, an employee was not even aware of extremely offensive posts made about her by a work colleague (as they were not Facebook friends) until she was shown them. Legal advisors should recommend the employer makes it explicit that disparaging and inappropriate comments about another employee on social media will amount to a breach of the policy, even if the victim is not aware of the post.

A number of the social media cases arose because a colleague reported an offending post to the employer. Employees should be reminded that colleagues reporting offending posts must not be bullied or harassed.

In another case, an employee put up threatening and intimidating posts about a work colleague who had reported to management his comments referring to his place of work as "Dante's inferno". The Tribunal found the threatening post was, of itself, sufficient to justify his dismissal.

Bringing the Policy to Employees attention

An argument often raised by employees is that they were not aware, or made aware, of the contents of the policy. Employees should, therefore, be asked to sign the social media policy, confirming they have fully read and understood it. Employers should also be advised to hold induction training, where they draw their policies to employees' attention. Employees cannot then claim the defence that they do not know, or were never told, about the policy.

Social Media Statistics

As can be seen in the examples above, Facebook is a very common social media outlet individuals use to express their views and recent statistics of this site prove rather interesting. Whilst Facebook was once the go to social media site for teenagers, within the past three years, more than 25per cent of teenagers (aged 13-17) have left Facebook. Surprisingly, older individuals have joined Facebook, with the aged 25-34 population increasing by 32per cent, the aged 35-54 population increasing by 41per cent and the aged 55+ population increasing by a considerable 80per cent.

These statistics demonstrate that Facebook is becoming progressively more and more popular amongst the 'working age' population. Whilst businesses will use Facebook as an ideal opportunity to advertise and promote business, they will also undoubtedly realise that since 30 billion pieces of content are shared each month (including statuses, comments and photos) they must have policies in place to protect their reputation.

However, since hundreds of social media sites exist, employers will not only be looking at your Facebook page for evidence of misconduct. The amount of individuals worldwide who use at least one social media site has risen to 25per cent. This year, the top 10 most popular social media sites are as follows:

1. Facebook
2. Pinterest
6. Tumblr
7. Instagram

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| 3. Twitter | 8. VK |
| 4. LinkedIn | 9. Flickr |
| 5. Google Plus + | 10. Vine |

Instagram and Twitter can be regarded as youth dominated networks, since statistics illustrate that 74per cent of Twitter users are aged between 15 and 25 and 90per cent of Instagram users are under 35. On the other hand, however, Pinterest and LinkedIn can be considered 'older generation' social media sites; the average age of a LinkedIn user is considered 42 and only 21per cent of Pinterest users are below the age of 25. Both sites have seen a sudden rise in popularity with Pinterest users having even recently overtaken those of Twitter.

Again, these trends highlight the need for employers to have an effective social media policy. If employees are increasingly joining social networking sites, employers have a higher risk of the business's reputation being damaged. This is because the employee could post, tweet comment or endorse the 'wrong' type of behaviour, potentially linking the whole business to that specific behaviour.

Summary

These cases show that social media use requires proper policing. Employees need to be fully aware of what conduct their employer considers is and is not acceptable.

This is best achieved through a social media policy that is clear and explicit, gives examples to cover all the above situations, and is actively brought to the employee's attention. Induction training may be helpful, and internet monitoring should be made known. Employers will also have to ensure that they apply any policy consistently, and that the sanctions they impose for any breaches are proportionate.

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