



Spotlight On: SOCIAL MEDIA

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32,000,000 people in the UK have Facebook accounts, 21,000,000 have LinkedIn accounts and around 20,000,000 have Twitter accounts*

With the rise of hashtags and the upsurge in different social media platforms, what was a private matter between employees can quickly escalate to internationally destroying a company's reputation and financial viability. It's therefore no surprise that we have seen a lot of case law recently regarding social media. With this in mind, here are some tips for ensuring your business is in the spotlight for the right reasons.

Recruitment

With the rise of social media use, companies often check job applicants' social media profiles before considering them for employment. Many companies will discount a candidate because of something they have said or done in the past. Some may argue this is direct infringement on their right to a private life, however others would argue reviewing someone's social media may give an insight into their character and thus their suitability for employment. After all, the company has a reputation to protect. However, if you discount someone for a discriminatory reason, you could open yourself up to a claim. We therefore suggest you seek advice before dismissing an applicant for this reason.

Prevention is better than cure?

However good the privacy settings, there is always a risk that someone will re-post something (as Ms Gibbins found, see below) and employees need to be aware what they do in their personal lives can also

* As at the beginning of 2017, according to Rose McGrory Social Media Ltd

impact on their employer. Therefore, it is best practice to have a specific policy to make your expectations clear, but how far should you take that policy?

Elements of a good Social Media Policy

Think about the following points when preparing a bespoke policy to suit your aims:

- educate – the policy should confirm the company does not wish to interfere with employees' activities outside work, but it has the right to protect its reputation;
- clarify - the policy should make it clear your employees must make sure any comments or opinions expressed are clearly theirs and are not representative of the company;
- note - the company logo, brand names and other trademarks are the property of the company and must not be used without prior permission;
- define - what the company regards as acceptable and unacceptable conduct online. Whilst the list does not have to be exhaustive, it should set the tone of what you expect;
- report – the policy should clarify who to complain to if there has been a breach of the Social Media Policy and what the ramifications are if the policy is breached
- monitor – in addition, the policy should state that social media posts may be monitored and for what purpose.

Whilst you cannot stop your employee from breaking the rules (as laws do not stop people from being criminals), having a clear policy may make an employee think before they post and enable the company to take appropriate action in the event of a breach.

Dealing with Misconduct

Even with a strong social medial policy, employers must make sure any disciplinary process is properly conducted and any allegation is drafted to fairly reflect any wrongdoing. Employers must evidence there is a sufficient connection with their work and there are reasonable grounds

Employer's Checklist:

- Create a robust policy and educate on Social Media
- Clarify, note and define what the company expects of its employees
- Have a clear reporting policy in place
- Monitor appropriately

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to support taking action against an employee. A dismissal is therefore not always going to be a safe appropriate outcome. We therefore recommend taking advice before proceeding with any disciplinary action.

When it goes wrong ...

In the case of *Hayward v Chadwick, ET, 2016*, Mr Hayward was dismissed from his role with a food supplier for recommending a discount from another food supplier on Facebook. The tribunal heard the company had already decided to dismiss Hayward before they brought him into a disciplinary meeting. The Tribunal concluded Mr Hayward was unfairly dismissed, that he did not contribute to his dismissal and there was no evidence to show that had a disciplinary process been properly carried out, he would have been dismissed. Mr Hayward was awarded the full compensation package with no reductions, and a 25 per cent uplift for failing to follow ACAS guidelines.

Consider *Rachel Burns v Surrey County Council, ET, 2017*. Ms Burns managed a care home for elderly and vulnerable residents when she posted images and a video of people in her care dancing and singing. With a full social media policy and guidance in place, Surrey County Council may have been able to fairly dismiss Ms Burns but they gave her only two days to decide upon either a demotion with a significant pay cut or a dismissal. In August a Tribunal upheld her claim for unfair dismissal. However, her award was reduced for both contributory fault and on the grounds that if a fair process had been followed, she would still have been dismissed. She came away with just £5,825.73.

Finally, where a robust policy and a full and fair process has helped - the case of *A. Gibbins v British Council, ET, 2017*. These claims of unfair dismissal, wrongful dismissal and discrimination because of philosophical belief were brought after Ms Gibbins was summarily dismissed by the British Council on 8 August 2016 for gross misconduct. Ms Gibbins had posted remarks connected to Prince George and the Royal Family as a whole on Facebook which had led to widespread media criticism and

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adverse public comment about both her and the British Council. Whilst the Tribunal did have some sympathy for Ms Gibbins' predicament, and appreciated that she did not foresee, let alone intend, the media storm, (even if they thought she should have done despite having the highest possible privacy settings), it did note because of Ms Gibbins bringing the British Council's reputation into disrepute by her reckless lack of judgment on social media, her dismissal was fair.

What should you do?

Firstly, take screenshots of the relevant social media posts; it is difficult to appropriately address a situation without any evidence! What process follows next will depend on the employee and the situation but may include an impartial investigation and subsequent disciplinary action.

If you become aware of a breach, we can advise you and assist you through each step of the process. We can also offer training on a number of topics in the event you want to promote certain policies to afford a greater level of protection.

For advice on this and other issues, call 01476 583279 or email
employmentlaw@lelc.co.uk

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