

Employment Briefing Note

ANTI-SOCIAL NETWORKING?

The use of social networking sites and employment law

These days, if you are not updating your Facebook status or 'tweeting' your followers on Twitter on a daily basis you are considered to be behind the times. In addition, no memory will ever be too distant when the world at large is videoing every opportunity on their i-phone ready to upload the evidence on to YouTube. Of course, the possibilities are endless but when does online networking become anti-social?

Impact on Businesses

The use of social networking sites has rapidly increased over recent years and now many employers find themselves witnessing conduct by their employees which, if undertaken in the workplace, would have resulted in disciplinary action or even dismissal.

Consider an employee posting derogatory comments on a blog about its employer or photographic evidence being obtained of conduct capable of bringing a business into disrepute – what can an employer lawfully do to address the situation? In addition, what about employees spending disproportionate amounts of time on these sites during working hours?

Depending on the facts and the nature of the alleged misconduct, employers may need to investigate the matter with a view to taking disciplinary action.

Clearly with respect to the information posted on social networking sites, the employer has to consider the rights of the employee, including basic human rights to privacy and a private life. Investigations may not be as straightforward as with other forms of potential misconduct and in some cases, it may be necessary to engage the assistance of an IT expert. In terms of what is considered to be an acceptable level of time spent on the sites by employees, this will depend on existing policies or what has occurred as a result of custom and practice.

Staff policies

Prevention is better than cure and it is strongly recommended that businesses have in place an Internet Policy which makes it clear to their workforce what internet and email usage is acceptable and what, perhaps more importantly, is not. This Internet Policy will usually concentrate on use of the employer's IT facilities only.

We recommend that employers consider the benefits of either expanding this Policy or introducing a separate Social Networking Policy which is intended to deal expressly with personal use of the sites mentioned above, both in and out of work hours, whether on the employer's IT systems or the employees own.

A comprehensive Policy would:-

- confirm the internet usage which is prohibited during work-hours on company equipment or personal equipment (as most people will now have access to the internet on their mobile phones). Use could be restricted to break times and before and after work but not at any time which would interfere with the performance of the individual's duties.

The Employment Team at Spearing Waite are experienced in drafting both staff handbooks and supplementary policies to existing handbooks. If you think that social networking may represent a potential problem for your business, or alternatively are already experiencing issues with employees please contact us on 0116 262 4225. If you have any questions generally about your rights and obligations as an employer please also feel free to give us a call.

Contact us

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The key is always to investigate issues objectively. Employees should be given plenty of opportunity to provide an explanation with respect to any alleged wrong doing. Disciplinary steps should only be taken where necessary and should be proportionate with respect to the alleged offence. Other factors, such as how the employee responds to the issue, may be relevant to the outcome. For example, where an inappropriate comment has been posted, if an employee deletes the offending information, perhaps with an apology or a statement disassociating themselves, the employer may look more favourably on this employee, than one who refuses to remove the content.

It is best to warn employees in advance of the hazards of social networking sites, how the business approaches misuse by its employees and whether or not access to these sites is permitted during working hours. The warning should be in the form of a Policy. The benefits of such a policy are that:

- it is more likely that such issues can be avoided;
- the employee would not be taken by surprise if/when they faced disciplinary action; and
- the employer will be in a strong position to take the necessary disciplinary action.

- specify that disciplinary action will be taken in cases of misuse or abuse of the privilege and provide a summary of the disciplinary implications of breaching the Policy, ranging from informal warnings to dismissal.
- point out that work email addresses should not be used when registering on such sites.
- make clear to employees the nature, extent and reasons for monitoring internet and email usage.
- specify conduct which can not and will not be tolerated by a business, explaining why and illustrating the pitfalls.
- spell out the potential consequences of breaching confidentiality obligations, defaming the employer or otherwise damaging its reputation in material published online.

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