

Employing the Facebook Generation

With the increased emphasis and use of social media by employees, and with popular networking sites such as 'Facebook' and 'Myspace' beginning to replace the 'chat by the water cooler', it is essential that employers and employees are aware of the risks and pitfalls that come hand in hand with social networks in the workplace.

Interestingly, employers are now taking advantage of checking popular social networking sites as a tool to vet potential new recruits by checking their status updates to assess absence and sickness records, and even to verify qualifications.

A recent Employment Tribunal ruling in the case of Preece –v- J D Wetherspoons represents an interesting authority on the use of social media in the work environment. This particular case involved a Pub Manager who was dismissed for gross misconduct following comments posted on her Facebook about two customers who had subjected her to verbal abuse and threat. Interestingly, the Employment Tribunal deemed it a fair dismissal. It was held that the employer's decision to dismiss for gross misconduct was reasonable in light of Ms Preece having posted comments on her Facebook whilst she was at work. The comments were considered to have been posted as a form of amusement between Ms Preece and her Facebook friends. Further, it was considered irrelevant that she considered her privacy settings to be such that only her close friends could view her page. In actual fact, a much wider audience was able to view her Facebook and in this instance it included relatives of the customers who were central to the offensive material posted. The employer's ground for disciplinary were such that the employee had:-

1. Brought the Company into disrepute.
2. Breached the implied contractual term of trust and confidence.
3. Had breached the Company's e-mail and internet policy.

Interestingly, the Employment Tribunal did take the view that it would have been more inclined to issue a warning but stated that it was not for the Tribunal to substitute what they would have done in the particular circumstances of this case.

In coming to their decision, the Tribunal also had in mind whether the employee's right to freedom of expression had been infringed in light of the dismissal. The population of European Member states enjoy the right to freedom of expression under the European Convention on Human Rights (article 10(1)).

However, article 10 (2) does provide such right to be subject to, "*formalities, conditions, restrictions or penalties are prescribed by law and are necessary in a democratic society, in the interest of national security, total integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary*".

The Tribunal's view was that the Claimant's activities were in the public domain, despite her belief about her privacy settings. It was perceived that despite her right under article 10, the Company's actions were justified under article 10(2) in light of the potential damage to the Company's reputation and goodwill.

Moral of the Story

It is expected that cases involving employees and use of the social media in or out of the work environment are likely to increase in light of the increasing popularity of social networking among the Facebook Generation. Employers will be advised to exercise prudence when dealing with such situations and also in the drafting of their internet policies which should be issued to all employees with their contract of employment, or be easily accessible.

Employees should also exercise all due caution when venting their anger and frustration on their "private" Facebook profiles. It remains to be seen whether a contrary decision would have been taken had the comments been posted outside of the work environment. However, if a Company acquires evidence of the Company's reputation or goodwill having been subjected to disrepute then disciplinary sanctions will be justified and inevitable, though it remains to be seen whether a dismissal in these circumstances will be justified.