



Friend or foe?

Balancing the risks and benefits of using social media can be difficult, says Helen Crossland, so an effective communications policy is invaluable

The growth and popularity of social media has been unprecedented in recent years and is only set to continue. For businesses, social media can be a powerful marketing tool when used correctly and it is not uncommon for companies to have their own Facebook profile or to 'Tweet' about industry matters. In fact, a business could be viewed as being behind the times if they are not seen to embrace and be part of the social media phenomenon.

Businesses can reap benefits from social media as a method of free advertising to increase their profiles within the sector, and help build new contacts and customers with the ultimate aim of generating new business.

Yet, for employers, it can also be a thorn in their side. Social media has significantly opened up the potential for employees to put their jobs on the line by 'going to print' with their views about their boss/colleagues/work, by publishing work matters that ought to be kept private or by discussing other issues that may damage the company's profile and image. Employees can also become all-consumed by blogging, LinkedIn, Twitter and Facebook which, if done during the working day, can result in a downturn in productivity.

Misuse of social media by employees – during or outside of work – can result in serious legal consequences for businesses. There is a risk that employees may disclose confidential or commercially sensitive information online, render the employer liable for discriminatory or defamatory comments, or bring the employer into disrepute.

The following serves as an example of the detrimental effect that inappropriate use of social media can have on a company's brand. A rail company apologised after comments were posted on its Twitter account following a suspected suicide at a Birmingham train station. After being asked by a passenger about likely delays, a member of staff Tweeted: "Go to the pub – things will be rubbish for at least the next hour." When another commuter asked if the victim was OK, the train worker replied: "Nope" and then Tweeted to another user: "Can't stop someone jumping off a platform in front of a train I'm afraid."

Communications policy

A well-drafted communications policy is essential for employers seeking to navigate the potential minefield of social media. While some employees' roles may not require them to use email or internet at work, a communications policy can not only cover the use of social media inside of work but also by employees offsite and outside of office hours.

Further, if an employer wishes to encourage the use of social media for marketing purposes by employees in certain roles then its policy should set clearly defined limits as to what is and what is not acceptable. Employers may also wish to consider whether it is appropriate for employees to befriend clients and contacts online and, if so, whether connections with business contacts can continue upon termination of employment.

Other existing policies should be reviewed in light of the communications policy. For example, an employer should consider whether its disciplinary policy needs to be updated to include breaches of the communications policy as examples of misconduct or gross misconduct.

Crucially, having a suitable communications policy in place will serve both as a preventative tool and a vital means of bolstering the company's defences in the event that an issue does arise.

Case studies

In 2011, a pub manager was found to have been fairly dismissed for gross misconduct after she made inappropriate comments on Facebook about her customers while at work. The employer's internet policy reserved the right for the employer to take disciplinary action should the contents of any blog (including Facebook and Myspace) "be found to lower the reputation of the organisation, staff or customers". The policy also specifically dealt with employees' use of social media while at work. The employment tribunal upheld the

employer's decision to dismiss, stating that it did not matter that the employee thought her privacy settings meant that only her close friends could see her comments. In reality, this was not the case.

In a more recent case, a Northern Ireland industrial tribunal held that an employee who posted obscene comments about a colleague on his Facebook page had also been fairly dismissed. The employee had, from home and in his own time, posted an obscene message on his Facebook page referring to the promiscuity of a female colleague (A). The comment also mentioned his employer by name and was read by his Facebook friends, including some work colleagues. A was excluded from the page, but was told about the comment by a colleague who asked for it to be removed. The employee then posted a further lewd comment about A on his Facebook page.

Following a disciplinary hearing, the employee was dismissed for gross misconduct based on harassment of a fellow employee and for bringing the company into disrepute by using its name in connection with his comments.

The subsequent tribunal found the employee guilty of harassment and that his dismissal was fair on this basis. However, it held that the employee's conduct had not brought the company into disrepute since its disciplinary policy only provided for dismissals in the event that the company was brought into "serious disrepute" and there was no evidence that this had been the case.

This decision, however, demonstrates that offensive comments made via social media may justify dismissal for gross misconduct even when they are made out of work and in the employee's own time. It also highlights the importance of employers having clearly drafted policies specifying the conduct that will amount to gross misconduct and that such misconduct may result in immediate dismissal.

Clearly, in any such situations the employer must conduct any disciplinary procedures in accordance with the Acas Code of Practice and their organisation's disciplinary procedure. But where an employee is found to have made derogatory or offensive comments, or to have conducted themselves in a way that has or could have damaged the organisation's reputation, dismissal may well be an outwardly necessary and justifiable sanction in the circumstances.

What should employers do?

Social media is here to stay and it is therefore essential that you protect your business from its potential risks, even if many of your staff do not use computers at work.

Once drafted, a communications policy should be actively promoted to all employees. Doing so will not only educate staff as to their rights and obligations but it will also allow employers to take disciplinary action when necessary to enforce the terms of the policy. In addition, employers may wish to consider the following steps:

Complete ban

Many employers have already made the decision to block access to social networking websites. While permissible, this may be bad for staff morale and employees may feel that they are not trusted. Before introducing a complete ban, an employer should give consideration to how its employees will react to such a measure.

Permit use with restricted access

A compromise may be to allow employees to use the sites with certain restrictions (e.g. prohibiting video downloading), or to allow staff to access such sites from computers in designated areas only (such as canteen areas) and at restricted periods (such as lunchtimes and before or after work).

Monitoring

Employers should ensure that use of company internet and email facilities is monitored and that employees are made aware of this.

Educating employees

Employees should be educated on internet and security issues, as it may be that many do not appreciate the dangers of using social networking sites or how their actions may bring their organisation into disrepute. Employers should also ensure that users understand how privacy settings work so that they do not inadvertently publish their information wider than intended.

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Discrimination

Perhaps most importantly, employers need to ensure that they do not leave themselves open to claims for discrimination due to employees' use of social websites and also during recruitment processes, which often now involve employers 'Googling' candidates or viewing their online profiles to vet their suitability. For example, profiles could include the prospective employee's sexuality, religious beliefs and perhaps photographs showing what they look like and activities that they have been engaged in. If an employer makes a decision to reject an applicant based on their online profile then a claim for discrimination could be pursued.

A balancing act

When monitoring and restricting employees' use of social media, employers must be careful not to infringe an employee's right to participate in legal activities outside of the working day or interfere with their human rights to privacy or to freedom of expression.

However, employers should also not let the benefits and positive exposure that social media can bring to their organisation be outweighed by the possible damage that could be caused by employee misuse. This can, for the most part, be managed and controlled by educating employees and maintaining an effective communications policy.

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