

Social Media in the Workplace – Are We CluedIn?

This article was co-authored by Rebecca and Ruth Keating, both Law graduates from Trinity College Dublin. Rebecca is currently an associate at Dropbox and Ruth is an associate at Ci. In this letter they discuss social media's impact on employment relationships.

Dear Editor,

Social media platforms have revolutionised interaction. Twitter, LinkedIn and Facebook have changed the face of both personal and business relationships. This poses huge issues for employers and employees in terms of evolving concerns. It is a developing area which involves the integration of both old ideas and the new, inviting the creation of new norms and standards. In an era of smart phones and social media, the issue of productivity in the workplace may at first appear to be the most apparent problem. However, the rise of social media raises issues at every stage of the employment relationship. This letter will first consider the impact that social media will have on the employment relationship itself, focusing on the particular example of disciplinary proceedings. Finally, the impact of social media on the conclusion of employment will be highlighted.

A THE EMPLOYMENT RELATIONSHIP

The advantages of social media can be a double edged sword. An employee may communicate with customers and clients through social media with ease but may also create negative attention for the company on a scale previously unimaginable. This represents a new dilemma of how an employer will deal with misconduct by an employee.

In respect of misconduct, the net of responsibility has been cast further. The Trade Union Congress famously referred to Facebook as ‘3.5 million HR accidents waiting to happen.’¹ In April 2009 two workers for the pizza chain Dominos uploaded a video of themselves clothed in their work uniforms mishandling food.² The video received close to one million hits. Although Dominos acted quickly, by the time the video had been removed it had been shared so extensively that it was virtually impossible to eradicate its existence from the internet. This resulted in significant reputational damage for the company.³ In this respect, given the number of viewers of the video and consequently the level of reputational damage, the use of disciplinary action and dismissal was justified. However, not all cases will be as clear cut for all employers. The use of social media offers concrete proof of misconduct, but equally any response must be proportionate. A noteworthy example of this is the UK decision of *Taylor v Somerfield*.⁴ Here the low level of YouTube hits for the video meant that the company’s reputation was not damaged. Therefore, the usual rules regarding proportionality were applicable. It is important to note that the employer can determine the ramifications of an abuse of social media. The creation of a clear social media policy will firmly ground an employee’s responsibilities in respect of social media usage. In *Mehigan v Dyflin Publications* an employee was dismissed for disseminating pornographic images through his work email.⁵ In the hearing, the employee had been found to be unfairly dismissed as there was no clear breach of the Company policy.

¹ Trade Union Congress, ‘Briefing on Online Social Networking and Human Resources’ (August 2007) Dublin.

² Sean Gregory, ‘Dominos YouTube Crisis: 5 Ways to Fight Back’ *TIME Magazine* (18 April 2009). <www.time.com/time/nation/article/0,8599,1892389,00.html> accessed 16 March 2015.

³ Jessica Lovell, ‘Employer v Employee... and the Rest of the World Via the Media’ *The In-House Lawyer* (9 November 2010) <www.inhouselawyer.co.uk/index.php/media-entertainment-a-sport/8220-employer-v-employee-and-the-rest-of-the-world-via-the-media> accessed 16 March 2015.

⁴ *Taylor v Somerfield Stores Ltd* ETS/107487/07.

⁵ *Mehigan v Dyflin Publications* ED 582/2001.

The creation of a social media policy is central in practice. In order to adequately accommodate for this, employers should regularly update this policy to keep up with the rapidly developing area of social media.

B POST-EMPLOYMENT

The ownership of company contacts is a developing area of interest. The reality is that employees not only amass these contacts on networks such as LinkedIn, but often do so at the request of their employers.⁶ In the absence of Irish legislative guidance on the matter, any gap must be filled in by analysing the contract between the parties and common law principles. In this regard developments on this topic in the UK and US are noteworthy.

The leading case in the UK is that of *Hays Specialist Recruitment (Holdings) Limited v Ions*.⁷ The Court held that an employee who records client contact details with the intention to utilise them in future competing business would be potentially in breach of their employment obligations. It serves to highlight the developing tension in client management and the personal employer/employee relationship. In this regard the case of *Eagle v Edcomm* is of interest.⁸ In *Edcomm* Dr. Eagle as CEO set up a LinkedIn account, with the assistance and encouragement of Edcomm. Following her termination her LinkedIn account was taken over by the new CEO, and all her contacts were subsumed into that of companies in this way. The court held in Dr. Eagle's favour and pointed out that Edcomm did not have a policy in place determining who owned the accounts. However, it was noted that any such instance must balance the privacy of the individual against the need of the employer to protect their interests.

⁶ William Fry *Employment Report* (2013). The report highlighted that 61% of employees store work-related contacts on social media sites. <www.williamfry.ie/.../test/Social-Media-in-the-workplace-report.sflb.ashx> accessed 16 March 2015.

⁷ *Hays Specialist Recruitment (Holdings) Limited v Ions* [2008] EWHC 745.

⁸ *Eagle v Edcomm* 11-Cv-04303 (ED Pa Sept 21, 2011).

It is submitted that this will become a very important area in future employment law disputes. What is crucial is that employer's offer clear and unambiguous guidance as to who owns LinkedIn contacts.

C CONCLUSION

The overriding advice to employers is to implement a social media policy and to ensure that employees are both aware of the policy and understand its affects. The greatest impact of the rise of social media exists in its ability to transport information quickly and easily. It is these two aspects which represent the most concern for employers. While many may fear the new rise of the 'digital water cooler'⁹ the real challenges to the world of employment are in the effects it will have on the traditional conflicts across all stages of the employment relationship.

Le meas,

Rebecca and Ruth Keating

⁹ Jon Hyman, 'Social Media is the Digital Water Cooler' (The Practical Employer - Workforce, (21 May 2013) <www.workforce.com/article/20130521/BLOGS07/130529994/social-media-is-the-digital-water-cooler> accessed 16 March 2015.