

Social media: A guide for employers

Social media, whether in the workplace or outside the workplace, is a big issue for employers. Social media is a great marketing tool for organisations. Used in the right way it can help develop the brand, promote services or products and generate custom. However, inappropriate posts by employees could have a huge effect on the reputation of the business. Employers are at least able to reduce the risk of detrimental postings by taking certain measures such as implementing a robust social media policy and providing training to staff.

Social media policy

Having a clear social media policy, which is communicated to the workforce and regularly reviewed, means that employees will be aware of the perimeters of using social media and what is prohibited. A social media policy should, for example, include the following information:

- That the policy covers all forms of social media including [Twitter](#), [Facebook](#), [LinkedIn](#), [Instagram](#), [Google+](#) and other social media sites.
- That the policy applies to business use as well as private use when the activities could affect the business.
- That social media must not be used in ways which would mean that other policies (such as anti-harassment and anti-bullying, disciplinary, data protection and internet and monitoring) are breached.
- Prohibited uses such as making comments which are discriminatory, derogatory or defamatory about the business, staff or third parties.
- Guidelines on how to use social media for work purposes.
- Details of [monitoring of employer's IT systems](#), including social media activities, and the justification for the monitoring i.e. legitimate purpose including ensuring compliance.
- The consequences of breaching the social media policy i.e. that breaching any part of the social media policy will result in disciplinary action and could lead to dismissal.



Training

It is important to train employees on how to use social media to promote the business.

When developing a brand there needs to be consistency. Managers ought to be trained on what information to publish, the message that will be sent out and house style. Managers should then inform those that report into them what is expected.

It may be sensible to ensure that junior employees are required to seek the consent of managers before posting comments about the business.



Disciplinary action

[Employees may be dismissed fairly for conduct inside or outside work, which could include posting inappropriate comments on social media](#) . For conduct outside work, the key thing is whether the employee's actions affects the employment relationship or affects their ability to do the job or whether there is or could be damage to the reputation of the employer.

There have been a number of cases on social media, providing useful guidance. Each case will very much depend on its own facts. However, in determining whether a dismissal is fair these factors, where relevant, should be taken into account:

- The nature of the comments. In one case a dismissal was unfair when a comment was made on Facebook, "this place of work is beyond a f***** joke", on the basis that it was unreasonable for the employer to conclude a threat to the business. In another case an employee was dismissed fairly for sending an offensive email outside working hours from his home computer to a former colleague's home computer. The recipient forwarded the email with racist and sexist content to the recipient's workplace and the employer learnt about it. The tribunal held that there was potential damage to the employer's reputation.
- Whether the employee was aware of the social media policy, whether the policy was clear and indicated that the type of breach could warrant dismissal.
- Whether the posting is likely to affect the employment relationship or the ability of the employee to perform their role.
- Whether there is damage to reputation or potential damage to reputation. Has there been any actual damage and, if not, is damage to reputation a real possibility?
- How many people have viewed the post or are likely to view the post?
- The employee's position (seniority) within the organisation.
- Whether there has been a reasonable investigation.
- The employee's disciplinary record, length of service and any other mitigating circumstances.

Networking sites and client connections

Connections on networking sites, such as LinkedIn, who are the employer's clients could, arguably, be their property. Messaging or posting to these connections after the employee has departed the business could breach [client non-solicitation restrictions](#). Even updating a profile on such a site could amount to soliciting a client.

Matt Gingell

Specialist Employment Lawyer London

<https://www.mattgingell.com>

In some contracts of employment, employers specifically require employees to delete existing or prospective clients from their profiles on networking sites when their employment ends. Employees may also be prevented from reconnecting with these connections for the period of the restriction.

This guide is intended for guidance only and should not be relied upon for specific advice.

If you need any advice on **social media** issues or have queries relating to other employment law issues please [contact](#) me on [0203 797 1264](tel:02037971264).

Do check mattgingell.com regularly for updated information.