



Reputational Damage Through Social Media

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According to a recent research study by DLA Piper, 31% of those employers surveyed had implemented disciplinary proceedings because of the information that an employee had displayed on a social media site about the employer. As well as employees criticising their employers, another issue is employees who write negative comments on social media sites about the employer's clients or which otherwise bring the business into disrepute.

This article covers a number of recent cases look at the position of employers dismissing employees for such comments and how employers can best protect themselves from damaging comments from employees in a potentially global forum and take action against employees if the worst happens.

The Recent Cases

In *Preece v J D Wetherspoons Plc* the claimant, a Shift Manager at a Wetherspoons pub, was dismissed after posting abusive comments about two identified customers on her Facebook page. These comments were posted during working hours and were read by the customers' daughter who complained to Wetherspoons. This was in clear breach of Wetherspoons' email and internet policies which Ms Preece was aware of and she was dismissed following a reasonably disciplinary investigation.



The employment tribunal decided that the dismissal was fair and focused in particular on the fact that Wetherspoons had clear policies and procedures, including reserving the right to take disciplinary action should an employee make any postings on sites such as Facebook which "are found to lower the reputation of the organisation, staff or customers" and that a proper disciplinary investigation and process had been carried out.

In *Whitham v Club 24 Limited t/a Ventura*, Ms Whitham was dismissed for breach of confidence after posting relatively minor comments that related to her working conditions and the persons with whom she was working on her Facebook page, which was visible by approximately 50 'friends'. The messages were brought to the attention of Ventura by two colleagues of Ms Whitham who were her Facebook 'friends'. Ventura was concerned about the impact of Ms Whitham's comments on its relationship with an important customer, the Volkswagen group, but it did not carry out an investigation to find out whether this concern was in fact valid and the customer did not actually raise any concern with Ventura.

The employment tribunal decided that the dismissal was unfair. Ventura had issued various policy documents, including an employee handbook, but (unlike the Wetherspoons' policy) no document contained a clear social media policy beyond a requirement not to post confidential company information on sites such as Facebook. The tribunal did not feel that Ms Whitham's comments fitted into the category of breach of confidence and also decided that Ventura had not carried out a reasonable investigation into the matter. In particular, the tribunal was critical of Ventura's failure to contact Volkswagen group about the incident and its lack of understanding of its own disciplinary process and how it should be applied.

In *Lerwill v Aston Villa Football Club Ltd*, Mr Lerwill was the football club's historian. After posting an article on an unofficial fan forum commenting on a recent game in early 2009, Mr Lerwill was asked by Aston Villa informally (i.e. outside of any disciplinary process) not to make web postings other than of a historical nature. Later in the year, Mr Lerwill made some inappropriate comments on forum sites and was dismissed. It was held by the tribunal that Mr Lerwill had been unfairly dismissed as he had not been given any indication of the severity with which the club would view his breach of the informal discussion in early 2009, nor was there any guidance for him in any policy or procedure or his contract that would put him on notice that comments on a public message board could result in disciplinary proceedings and dismissal.

Key Lessons from the Recent Cases

Social media is increasingly important in the social lives of many employees and it is also playing a larger role in the workplace, particularly in terms of networking and business development. It is, therefore, often not in employer's interests to completely restrict employees' access to social media and it is not realistic for employers to have control over what an employee posts on social media sites. However, it is important to ensure that there are clear parameters of acceptability so that the use of social media is not completely unfettered.

The recent cases highlight four key points for employers to enable them to take action against employees who step over the line:

1. it is essential that the employer has clear social media policies in place which explain what is unacceptable behaviour, particular in relation to employees publishing negative comments about its own or its customers businesses or clients;
2. it is unlikely that general policies which are concerned with confidentiality will cover unacceptable social media postings, even if they explicitly mention social media;
3. it is important that employees are made aware of the social media policies and that breach of these policies is a disciplinary matter which in serious cases may lead to dismissal; and
4. as in all misconduct cases, employers should ensure that they carry out a reasonable investigation before dismissing or disciplining an employee.

As well as these legal issues, it is prudent for businesses to have public relations crisis plans in place to deal with the fallout from inappropriate social media postings as quickly as possible.