

Social Networking: Blog it or flog it?

Many employers are recognising the power of social networking for a whole range of purposes: whether to generate new business, increase their profile or even to assess potential staff.

In this article, we consider some of the employment law issues arising, which will be covered in more detail in our Social Networking seminar. As well as taking advantage of the opportunities provided by social networking, employers need to be aware of the potential adverse effects.

Before employment starts: The use of social networking sites to vet individuals as part of the recruitment process is increasing. Recent statistics suggest 45% of recruiters search the internet for candidates' personal profiles. Checking a candidate via their social networking sites can yield a very different picture from the one painted by a CV!

However, the inherent subjectivity and irreverent nature of such sites can create problems. Quite apart from the questionable relevance of such sites to the working environment, networking sites often contain details of the individual's race, age, sexual preference, religion, marital status etc. Employers using such sites are susceptible to challenge from unsuccessful candidates who may argue that such characteristics have unlawfully informed the selection process.

For the same reasons that employers should not ask about childcare responsibility, religion etc at interview, it is

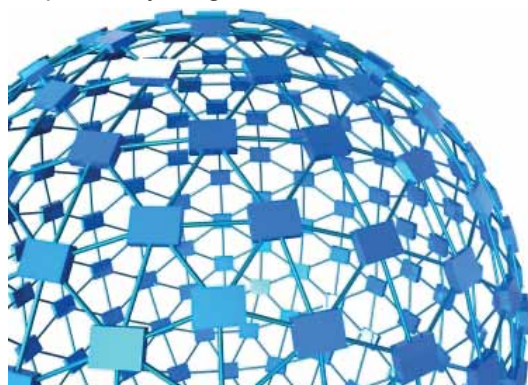
dangerous to make inquiries on social networking sites if the same sort of information would be uncovered. Employers should ensure that the entire recruitment process is carried out in line with the organisation's Recruitment Policy in addition to its Equal Opportunities Policy.

During employment: Most employees have some degree of access to the internet during working hours. Employers need to ensure that internet use is appropriate, lawful, does not interfere with the employee doing their job, and does not give rise to employment related claims by way of unlawful "cyber-bullying" or harassment of colleagues.

Employers should carefully consider their policy with regard to use and policing of the internet at work. An Email and Internet Policy should be created that clearly sets out the rules:

- What use of the internet is permitted? At what times?
- Can social networking sites be accessed?
- Is commenting about the employer on such sites permitted?
- What sort of material must not be accessed or forwarded?
- Is there a policy regarding use of such sites for business development purposes, and who is in charge?

Staff should be advised of the policy, its content and trained in its application, with the policy being applied and enforced consistently and firmly. The consequences of failure to follow the policy should be set out (with appropriate reference to the organisation's Disciplinary Policy). The policy should consider not only employees' use of the employer's systems during the working day, but the thorny issue of comments made about the employer on networking sites outwith the workplace. The effect of adverse comments on social networking sites and the impact upon reputation should not be underestimated.



In this edition

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An overview of the benefits of social networking and the need to use it carefully so as to minimise potential claims and time wastage. Issues to be aware of at the recruitment stage, during and after employment are also highlighted, together with the need for an adequate Email and Internet Policy encompassing the use of social networking sites.

Age Discrimination - Changes Ahead

It is probable that the "default retirement age" of 65 will be abolished altogether. What will this imply for you?

Agency Workers

New Agency Workers Regulations will come into force on 1 October 2011. How will this affect their terms of employment and entitlements?

Update

New Compensation Limits

Fit Notes

Social Networking: Blog it or flog it? continued

After employment ends: Finally, employers should also bear in mind the potential claims that can arise from former staff. Comments made by the employer or by current staff about former staff could potentially be relied upon to support discrimination claims arising after employment has ended.

Equally, employers may need to be vigilant about abusive blogs or messages posted by ex-employees on social networking sites, and consider what action they may be prepared to take to stop reputational damage being caused.

Summary: Social networking sites have the potential to rapidly grow a business and increase its profile, when used carefully and sensibly. At the same time, care needs to be taken to limit the adverse effect such sites can have with regard to claims, as well as lost time. With a recent survey finding that employee internet misuse costs UK businesses £1.38 billion in lost productivity, can you afford to ignore it?

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Age Discrimination - Changes Ahead



The saga of the "default retirement age" rumbles on. At present, an employer can require an employee to retire at age 65, assuming he follows the correct procedure. Although the employee can request to stay on, the employer can refuse that request and need not give a reason for doing so. Such a dismissal will be deemed to be "fair". The prolonged "Heyday" litigation, which sought to challenge that position as unlawful, concluded last year with the challenge being defeated. Nevertheless, the Government is proposing currently to change the law. It seems likely that the "default retirement age" of 65 will be abolished altogether (rather than being increased to a higher age).

If the default retirement age is abolished, employees will be able to claim unfair

dismissal if their employment is ended, whatever their age, and the employer would need to show a reason for the dismissal in the normal way. If the real reason was age, then the dismissal is likely to be unfair and discriminatory. It is possible that there will be exceptions to the general rule, but the Government's final position is awaited.

There is likely to be resistance from employers' bodies to the idea of employees being able to "work until they drop", but can it really be legitimate to force employees to retire against their will, if society is genuinely committed to equality for all? Employers will of course still be able to justify dismissal of employees who are unfit or incompetent in the normal way.

Food for thought! In the meantime, this may be a good time to review your equal opportunities policy and consider issues of age diversity in your workplace.

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Agency Workers

Employers who make use or may make use of temporary staff supplied by recruitment companies should be aware of forthcoming changes in the law in this area.

New Agency Workers Regulations have been passed by Parliament and are scheduled to come into force on 1 October 2011.

Broadly speaking, the Regulations ensure that after 12 weeks in a particular job,

agency workers will be entitled to the same treatment in respect of their main terms of employment (including pay, working time, holidays) as if they had been recruited directly by the "hirer" as an employee. Agency workers will also be entitled to information about the hirer's vacancies to give them the same chance as other workers to find permanent employment. We will be providing further details at a later session.

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Update

New Compensation Limits

As of 1 February 2010, the maximum compensatory award for a claim of "normal" unfair dismissal decreased to £65,300. This is the first ever decrease, which is a result of the annual revision being index-linked.

The limit on a "week's pay" for redundancy and unfair dismissal basic award purposes remains at £380 following last October's one-off increase.

It is worth mentioning that for certain unfair dismissal claims, as well as for discrimination claims, there is no upper limit on the compensation that the Tribunal can award.

Fit Notes

The Government is proposing to replace "sick notes" with "fit notes" (or, more accurately, the new "Statement of Fitness for Work"), with effect from 6 April 2010.

Fit notes will allow GPs to advise employers whether or not employees are fit for work and what support can be offered to the employee to facilitate a return to work. Further details are awaited.

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