

Facebook and employment



The use of Facebook, Twitter and other social media sites has significantly increased over the past few years. By June 2017 there were 2 billion Monthly Active Facebook Users and over 500 million people used Twitter, with 340 million 'tweets' per day.

The widespread use of social media has led to issues for employees and their employers.

Once users are registered on a site they may disclose much about their day-to-day life and are able to access significant information about others. For an employer this means potential access to information which provides them with an insight into aspects of their employees' private lives. Employers may decide that such information is damaging to their business (in reputational terms) or inconsistent with their expectations of staff conduct.

Use of Facebook at work

The availability of Facebook and other sites during office hours will generally depend on the employer's policy relating to internet access.

Some will significantly restrict access, in which case Employees should be informed exactly what restrictions apply.

The TUC guide – 'Facing up to Facebook' – advises employers to view Facebook as simply another means for an employee to organise their social life. It further suggests that access should be allowed during break times provided use does not interfere with an employee's work or damage the reputation of the business. Data protection regulations also mean that employees must be made aware that private use might be monitored.

Other employers may well see social networking sites as marketing tools for maintaining customer relations. However, it is still important that there are clear policies in place which deal with the sort of business information that can be posted on an individual's site or page and an employee must be careful about what is posted.

The case of *Lerwill v Aston Villa Football Club* highlights the need for employers to put in place a social media policy for their employees to follow.

A social media policy must be communicated to employees and should set out in clear and unambiguous terms what behaviour is acceptable when using social media and the extent to which business-related information can be posted online. Policies should also set out what disciplinary action might be taken against employees in breach.

Dismissals

Historically, the Civil Courts and Employment Tribunals have sometimes upheld dismissals arising out of an employee's behaviour outside work. One of the leading cases is *Mathewson v RB Wilson Dental Laboratory Ltd* [1988] IRLR 512.

In this case the Employment Appeal Tribunal (EAT) upheld a finding that a dental technician had been fairly dismissed following his arrest during his lunch hour for being in possession of a small amount of cannabis. The Tribunal and EAT accepted that it was irrelevant to consider whether the employee might have been under the influence of drugs at work. Instead it was enough that the employer concluded that an arrest for a drugs offence might make him unsuitable for his job and that it could influence the behaviour of younger members of staff.

The EAT also upheld a finding of fair dismissal in the case of *Pay v Lancashire Probation Service* [2004] IRLR 352. Here, the employee was discovered to be involved in extreme sexual activities when he posted explicit footage on the internet. The employer took the view that such behaviour was incompatible with his role as a probation officer, in particular given his work with sex offenders. Also of note in this case was the EAT's view that material posted on the internet was in the public domain and so the individual was not protected by Article 8 of the European Convention on Human Rights (the right to private and family life).

Posts on Facebook have also now led to the dismissals of employees resulting in several Tribunal cases, including *Preece v JD Wetherspoons Plc*. In this case an employer's decision to dismiss an employee for making derogatory comments about customers, following a full and fair investigation, was upheld by a Tribunal. It is also of note that in January 2008 a Cambridge University admissions tutor indicated that he checked the profiles of potential students on Facebook. It is highly likely that some prospective employers do the same.

When considering whether a dismissal is fair, a Tribunal is likely to take into account the seniority of the employee. The more senior the employee, the more careful they should be about material they post online, not least given that a Tribunal might be swayed by a "bad example" argument (as in the *Mathewson* case).

The nature of the job will also be a factor (as in the *Pay* case)..

Of course, the above cases illustrate that there has always been a balance to strike between the private life of employees and their obligations towards their employer. That is true whether or not it relates to matters on or offline. As the TUC guide points out, an employer is unlikely to follow an employee to the pub to find out what he or she has to say to friends about their day at work. Just because they can do something similar online does not mean that they should – but employees do need to take care when posting personal information referring to their employer or job.

It is clear that as Facebook and Twitter continue to grow in popularity the role they will play within the workplace will also increase.

This Fact Sheet is for information only and is not intended to be a substitute for legal advice.

For more information on Facebook and other Employment Rights, please call our Employment Rights team on 033 3344 9603.