

PJH Employment Law Update - 24 April 2015

Social Media Law Update:

1. This session will outline some of the legal implications of employee and employer social media use.

Background:

2. Social Media use is widespread. [The fastest growing segment of users is those aged over 45](#). 92% of businesses with a marketing function use social media.
3. Social media (Facebook, Twitter, LinkedIn, Google plus) has grown exponentially since 2005. There are now over half a billion tweets every day and more than 200 million linked in users. LinkedIn is a valuable recruitment tool.

Benefits:

4. The benefits of employee and business use of social media are obvious. Social media provides a cost effective way of interacting with your customers or potential customers, staff, potential staff and suppliers in a tailored but informal way.

Risks:

5. The risks to business in social media use are two-fold:
 - a. Reputational – because social media is in real time, very interactive, and spontaneous there is a very real risk of employees’ “misspeaking” and damaging the brand or the organisation. Twitter, LinkedIn and Facebook leave an evidential footprint as to what was said and how. That footprint can then be exponentially broadcast if a “misspeak” goes viral.
 - b. Confidential Information – a LinkedIn account or a Twitter account can be a valuable asset in its own right. That asset can be protected if it is a business account rather than an individual one.

Individual Accounts:

6. Individual social media accounts can be subject to an employer’s policy or rules, if what is posted impacts on the business or relationships in the business. Some examples:
 - a. ***Stephens v Halfords PLC*** – a dismissal for posting on Facebook “*Halfords workers against working 3 weekends in 4*” was deemed to be unfair as he removed the post two days later when he became aware that it breached his employer’s policy.

- b. **Smith v Trafford House Trust** – a breach of contract claim by an employee claiming that his demotion for expressing negative views on Facebook about gay marriage was unlawful and in breach of contract. The High Court agreed that the employer did breach the employee's contract. The High Court saw the employer's Code of Conduct which prohibited promotion of political or religious views as only applying to workplace communications rather than personal communications outside of work.
- c. **Young v Argos Limited** – dismissal for comments about a manager on Facebook about being as much use as a "chocolate teapot" and other comments was held to be unfair as it was not serious enough to constitute bullying and harassment.
- d. **Otomewo v Carphone Warehouse Ltd** - two employees who took their manager's phone and updated his Facebook status to read '*Finally came out of the closet. I am gay and proud*'. The tribunal found that the employer was vicariously liable for sexual orientation harassment as the incident happened at work, during working hours.
- e. **Teggart v TeleTech** – an employee who was dismissed for gross misconduct for posting vulgar comments about an employee's alleged promiscuity which he refused to remove was fairly dismissed as his conduct amounted to bullying and harassment.
- f. **Weeks v Everything Everywhere** – an employee was fairly dismissed for describing on his Facebook wall that working at EE was like being in "*Dante's Inferno*." The employer's policy expressly applied to personal social media output that criticised EE. The fact that this was posted during working time did not help the employee's case!

Corporate Accounts:

- 7. Employers should have rules and a policy framework in place as to use of the corporate or organisation's social media accounts. Without having clear rules in place the employer can be put in a very difficult situation.
 - a. HMV had a very unfortunate experience when an employee tweeted the redundancy exercise in real time with classic tweets such as "*There are over*

60 employees all being fired! Mass execution of loyal employees!” “Just overheard our Marketing Director ask how we shut down Twitter.”

- b. Content on social media is governed by the law of slander and libel he says with an *innocent face*.
- c. Courts will intervene to protect corporate linked in accounts and corporate run LinkedIn groups. ***Hay v Ions [2008] EWHC 745*** and ***Whitmar Publications v Earth Island [2013] EWHC 1881***.

Take Away Points:

- 8. Social Media can work wonders for a business if used well. Having policies in place is important, If there is an issue involving an employee's use ensure that the reaction by the employer is proportionate.