



## **11-68 Workplaces and social networking: Employment implications**

To all APSE main contacts in England, Wales, Scotland and Northern Ireland

### **Key issues;**

- ACAS have produced a useful research paper on workplaces and social networking and the implications for employment relations
- The full ACAS paper sets out its research findings and also describes numerous employment related issues to arise from the increased use of social media sites such as Facebook, MySpace, Twitter, Linked-in and You Tube.
- This briefing summarises the main research findings and recommendations and provides a web link to the full ACAS report

### **1. Introduction**

ACAS commissioned a small scale research project to explore the issues of social networking and mobile information and communication technologies on employments relations. The research was conducted by Andrea Broughton, Tom Higgins, Ben Hicks and Annette Cox. This highly useful research explores the types and nature of social networking, the impact on employers of employees using these networks and the responses and implications for employment, including disciplinary and dismissal issues and the positive benefits of using social media. The full report contains a number of case studies.

This paper explores some of the headline issues and a link to the full report is provided at the end of this briefing.

### **2. What do we mean by use of the internet and social networking sites?**

The internet is now considered a day-day business tool and there is usually some form of internet access at most workplaces, albeit with often restricted access to some sites. and polices in relation to personal use of the internet. In recent years however there has been exponential use of social media sites such as Facebook, MySpace, Linked-in and Twitter. 70% of the population use the internet and 49% of users engage in some form of social networking online. Social networking online allows for interactive comments to be posted by the users and read by other members of the network or wider internet users.

### **3. What is the potential impact of social networking sites on employment relations issues?**

The research reports points to cases whereby employers have taken action against employees for remarks or commentary posted onto internet sites that have referenced their company or workplace or, in some cases, named individual colleagues or managers.

Not all cases of disciplinary action are clear. For example passing comment on your employer may be regarded as a matter of 'free speech' and not necessarily be considered a matter of discipline. Equally however employee's comments could be seen to be defamatory and could invoke bullying issues if there are disparaging remarks about other colleagues made in an open forum.

There is a balance between reasonable social comment and un-acceptable employee behaviour or commentary. In some sensitive areas of employment the conduct of employees outside of work may call into question their suitability to do their job and of course this therefore impacts on what 'tests' of reasonableness would apply to any subsequent action by employers. Recent cases include one set of company employees being dismissed because they referred to clients as 'chavs' in a company that placed high regard on its customer care and ethos.

The report also emphasises that employer responses to commentary on social media sites must be proportionate and reasonable. For example many comments may be read by just a very small number of individuals but ensuring publicity from a Tribunal case could be made much more 'public' by the publicity surrounding a Tribunal case. This is particularly the case where there is a 'novelty' factor in reporting a case.

A further issue is that of 'moral intensity' whereby the comments of an individual could have an adverse impact on the employees business. It is easy to translate such matters to impact on local authorities. For example extremist political, religious or racist views being cited by a public employee who perhaps has day to day responsibility for ensuring fair access to council services. There are many grey areas and employers need to be mindful of this when considering any action.

#### **4. Recruitment and social media**

There appears to be a growing number of companies that use social media to vet potential candidates although the trend is much more prevalent in the USA than in the UK. However there are some issues with this.

Firstly employers can only check those potential employees who have a social media profile which has a bias in that each candidate would not be checked to the same level. Secondly this could introduce a further bias because of the profile of those using social media sites - younger employees for example. This does raise questions of equality and the potential for bias, even if inadvertent bias, in recruitment processes.

The ACAS reports references the TUC worksmart website notes that it is 'bad practice' for employers to use social networking sites to support recruitment as this process would undermine equalities. Since employers would know about one set of employees – with a social network profile – than others, whether those comments were either positive or negative.

#### **5. Conclusions and recommendations**

This small-scale research project has highlighted a range of employment relations issues that relate to the use of ICT and more specifically the use of social networking tools. Survey evidence illustrates that use of social networking sites by employees has grown significantly in recent years.

However, some small-scale survey evidence shows that among higher skilled workers, only slightly fewer than 15 per cent have access to social networking sites at work. This may indicate that employers are prohibiting use of such internet sites to avoid having to manage any negative consequences. However, in some of the high-profile cases of unfair dismissals for what employers believe is inappropriate use of social networking sites, the location of the employee when posting comments is immaterial. This potentially means that any employers who believe they have protected themselves through a blanket ban on use of social media through company IT systems may be misguided. This also means that employers who do not provide IT access to some staff or do not have IT in their workplaces cannot afford to ignore the issue.

Consensus on norms of behaviour in such new social spaces is only just emerging, meaning that codification of acceptable and unacceptable practices has not yet taken place. Employers seeking to regulate employee behaviour are well advised to adopt a commonsense stance and a flexible, pragmatic approach, drawing, where possible, on the norms that might apply in non-virtual settings. For example, if comments or pictures circulated or employee behaviours would not normally be regarded as acceptable in a face-to-face workplace setting, rather than an online setting, it may be wise and legitimate to subject them to a check of whether the 'online' nature of an interaction makes them any more legitimate. If they fail this test, they could be defined as in breach of company internet policy and to advise that disciplinary action may be taken against individuals contravening it.

A good and clear policy on what constitutes an unacceptable use of social media in a particular organisation will help both the employer and the employee to understand where the boundaries between acceptable and non-acceptable use lie. It is advisable to carry out some type of research beforehand, involve all stakeholders, including trade unions, and consult the workforce. This will make the policy stronger and more widely accepted. The joint development of a policy may also enable the parties to strike a balance between individual freedom of speech and actions that could have a negative effect on the employer. Regular review of policies is also a good idea, as the world of social networking and online media is moving at a fast pace. From the organisations we consulted for this research, the basis of policies, guidance and practice is largely one of commonsense and a reminder to employees that the same types of controls apply online as they do offline. In the case of BT, the policy on internet use is flexible, which means that different parts of the business can adapt it. Employers should also bear in mind that there might be generational issues at play, with younger employees being both more conversant with social networking sites, and less careful about how they use them. It is potentially quite easy not to think through the ramifications of posting something on a social networking site, how far it might travel, and the difficulties of removing it. Education and reminders to staff on these types of issues should therefore be a key part of any policy or guidance on the use of social media.

One key theme to run through the report is the fact that social networking sites tend to blur the boundaries between public and private life and employers need to establish a view on what is acceptable in terms of monitoring and trying to control what employees post on social networking sites in their own time. One way of doing this is to limit access to material that could be defamatory to the organisation so that employees are not in a position to post anything sensitive on their own social networking sites, although most organisations will already have procedures in place on the sharing of sensitive information with employees, for example, sensitive financial information in discussions with employee representatives. Despite these potential difficulties, it should also be considered that social networking can have specific benefits in the employment relations context. For example, blogging can be a positive action, allowing employees to present the human face of a company, if an employer is relaxed about allowing employees to blog. More widely, one of the main benefits of

social networking, according to the organisations contacted for this research, is the potential business benefits of this medium, which are not yet fully understood. Allowing employees the freedom to use social networking sites can therefore be a positive step, help to develop the workforce's knowledge of social media, and be part of a wider strategy of digital engagement with customers. Further, before reacting to employee blogging that has not been agreed with the organisation, employers should bear in mind that much of the blogging may just be the upshot of individuals needing to vent their feelings, rather than actions with defamatory intent. These kinds of social media uses may therefore be of low harm and read by a relatively small group of people.

Cyber-bullying is something that is linked to the rise of social networking tools. Although the evidence in terms of workplace cyber-bullying is scant. Nevertheless, employers should work on developing strong anti-bullying policies that are updated in the light of new kinds of technology, and need to bear in mind the fact that that cyber-bullying can occur outside the workplace to a much greater extent than conventional bullying, making it harder for employers to deal with easily. It will probably be the case that cyber-bullying will largely be covered by existing policies on bullying, and so policies or guidance on the use of social networking sites just need to refer employees back to the organisation's bullying policy. Below, we offer nine recommendations to employers on how to manage the issue of employee use of the internet and social networking sites.

**Recommendation 1: All employers should have a policy on internet/social Media use.**

The negative publicity that resulted from recent high-profile cases is unwelcome to employers. Employees will always need to 'let off steam' about their working life and traditionally this was achieved by chatting to friends in a social setting. It is therefore not the behaviour which has changed, but rather the context: blogging on social networking sites may allow the content of discussions to be **31** available to the general public, in contrast to a private conversation between friends. Critically, it is evident that employees have complicated and contradictory attitudes to social networking and that a high proportion post material about their view on and experiences of employment which they would not do using other media. It should also be remembered that consensus on norms of behaviour in such new social spaces is only just emerging; meaning that codification of acceptable and unacceptable practices has not yet taken place. Having a policy in place will ensure more clarity in these areas.

**Recommendation 2: An internet/social media use policy must set out clearly and explicitly the organisation's expectations of and definitions of acceptable and unacceptable behaviour, and the consequences of violation. These should be consistent with disciplinary procedures and cross-refer to them.**

The policy could be included within general guides on codes of conduct and amalgamated with the organisation's policy on data security and email. The policy should also contain a statement on employer use of the internet in relation to employees' activities outside work and be mindful of human rights legislation. It should also make reference to the Public Interest Disclosure Act and company policy on how employees should handle this.

**Recommendation 3: The policy on internet/social media use need not be complicated – the main message that online conduct should not differ from offline conduct, with reference to existing conduct guidelines, may suffice.**

Policies should advise employees to assume that everything they say on the internet could at some point be made public and to think about whether, for example, the comment they are about to post on a social networking site is something that they would want a colleague, their boss or a senior manager to read. Survey evidence has found that a majority of employees would change things they have written on their social networking sites if they thought that their employer could read them. It is evident that employees regard the internet as a qualitatively different form of communications medium, as shown by the high proportion of individuals who are willing to post comments on the internet that they would not wish their employer to see. A simple policy of advising employees not to say or do anything online that they would not do offline – and hence would mind becoming public knowledge – may often suffice as guidance.

**Recommendation 4: The policy on internet/social media use should be drawn up in consultation with staff, either through their representatives, if present, or directly, if no representatives are present.**

A prior survey of employee awareness of issues can help to achieve buy-in to future policy. Consultation with staff on the actual policy will help to ensure that it is fair. It may also help to determine what is reasonable within each organisation's context, particularly where employees have access to sensitive information on members of the public or commercially confidential information. It will also help build employee commitment to the policy and raise awareness of the fact that a policy is being formulated, which may be important for dissemination.

**Recommendation 5: A policy on internet use needs to be communicated.**

A high proportion of employee survey respondents do not know whether their employer has a policy on internet use – according to the 2010 My Job Group survey cited in this report, over 70 per cent of survey participants said that they did not know whether their employer had an HR or disciplinary policy regarding social media. This suggests either a policy gap or a communications gap. Managers need to ensure that individuals understand the policy and may need to think carefully about how they explain and justify it, which may need to vary between staff groups. For example, younger workers may be more proficient in their use of the internet and social networking sites, but may need more guidance to ensure that their use of this medium as an employee is appropriate.

**Recommendation 6: Organisations should make sure that there are adequate mechanisms for employees to raise formal and informal grievances.**

It is preferable for employees to use internal mechanisms to voice concerns about management practices than to raise these concerns outside the workplace and risk publicly damaging organisational reputation. The absence of any informal grievances in the workplace is unlikely to be an indicator of a healthy organisation. Such mechanisms could include internal fora, where employees are encouraged to be honest and to engage on issues that are bothering them, or "open" newsletters which contain information on difficult issues.

**Recommendation 7: Organisations may wish to consider how they can reap the business benefits of social networking.**

There is some evidence that staff may reciprocate organisational trust in allowing internet and social media access by promoting the organisation in return. The benefits of this are not yet fully understood, but organisations seeking to engage customers through the internet and digital technology should consider how they might take advantage of what could be a relatively low cost sales and marketing tool. Blogging by employees about their working life can be a way of presenting the human face of an organisation and some organisations are already looking at this idea. This usually takes the form of relatively formalised use of media such as Twitter, where designated employees post tweets about issues related to the organisation. It can also, however, take the form of employees' blogging about their day-to-day life in the organisation. It should also be remembered that employees can glean a lot of important information from the internet and so a blanket ban on internet use would be counterproductive.

**Recommendation 8: Employers will need to keep up to date in developments in employment law relating to social media.**

Case law involving employment relations disputes concerning social media is at an early stage and many of the principles of difference and similarity between real and virtual communications and concepts of intent, privacy and the role of third parties in social networking have not yet been tested.

**Recommendation 9: Employers need to consider reviewing policies on internet use/social media on a regular basis.**

Social media and the internet are fast-moving worlds and employers need to ensure that policies are kept up to date with the latest developments and trends relating to internet use in their organisation. Regular policy reviews involving all key stakeholders will ensure that policies address the organisation's main concerns. Employers should ensure that policies also cover issues such as cyberbullying, either by referral to the organisation's policy on bullying, or by addressing the issue explicitly.

The full report can be downloaded at

<http://www.acas.org.uk/CHttpHandler.ashx?id=3182&p=0>

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