

Cases

Case Law demonstrating inappropriate use of social media along with supported actions has been growing since *Plant v API Microelectronics Limited* (2016). This case found that derogatory comments made on social media were cause to dismiss a long standing employee with a clean employee record as the comments constituted a repudiatory breach by the employee of the employment contract.

Crisp v Apple Retail (2011). The comments posted could have damaged the brand of the company when there was a clear policy in place for acceptable use of social media. As such dismissal of the employee was deemed fair by tribunal.

Weeks v Everything Everywhere Ltd (2012). Referring to the place of employment as Dante's inferno, when asked to refrain, they refused and used offensive language stating no one could dictate his personal life. The tribunal found dismissal was fair and proportionate action was taken.

Game Retail Ltd V Mr C Laws (2014). The employee had created a private Twitter account and followed 100 Game retail stores; 65 of the stores had followed him in return. He had set his privacy setting to public so that his posts could be viewed by anyone. He subsequently made a number of offensive tweets. The ruling noted that the fact that the employee had used his private Twitter account to follow other Game stores, and allowed them to follow him in return, compromised the argument that his tweets were entirely private and did not impact on his employer.

Top Tips

Regularly check the privacy settings on social networking sites.

Who can see this? - Do you want or need co-workers to see your profiles.

Separate work and personal accounts

Only post what you would also say in person.

Ensure posts are not inappropriate or offensive.

Treat your profile as a portfolio / Curriculum vitae /

Resume

Consider the THINK model - T- is it Truthful?

H- does it Help?

I- does it Inspire?

N- is it Nice or Necessary?

K- is it Kind?

Ensure your mandatory training for data security, information governance and equality & diversity in the workplace is kept up to date.

“Online conduct should not differ from offline conduct”

John Taylor – ACAS Chief Executive (Wood, 2011)

**29% of employees
disciplined or dismissed for
misuse of social media**

“Formal allegations of harassment, bullying or any intimidating behaviour should be treated as a disciplinary offence” (CIPD, 2023a)

**47% of all adult internet users
(16-75+), report to have seen hateful
content online in the last year.**

(GOV.UK, 2019b)

Posting offensive
content may be
grounds for
dismissal

(Ravel, 2017)

Social Media in the Workplace



Safeguarding yourself, the company and others when using social media personally and professionally.

THINK before posting content online.

T- is it Truthful?

H- does it Help?

I- does it Inspire?

N- is it Nice or Necessary?

K- is it Kind?

% of UK Employees using social media

For Work Purposes - 26%.
Personal Use - 76%
(CIPD, 2013).

Overview

Employees are reminded that in line with the ABC Constructions' existing company policies, should a social media post breach the expectations outlined within the policy this may lead to disciplinary action with a potential to be dismissed.

Employees are to conduct themselves inline with ABC's company values and adhere to our policies. Many of our policies are interlinked and should be considered when using social media. The key policies include data protection, appropriate use of information technology and electronic communications, social media in the workplace and the disciplinary and grievance policy.

ABC Constructions and our employees both equally have the duty to maintain the trust and confidence that sits at the center of our employment contract (Daniels, 2022).

Employees need to consider what is posted to social media both in the workplace and outside of it. Should comments reflect in a derogatory way on the company it may present misconduct and be investigated under the disciplinary process (Raval, 2017). Employees should be aware that even if the privacy settings provided by platforms are utilised, a connected person or 'friend' still has the ability to take a copy of the content, as such content once posted online is not retractable.

Between 2020 and 2021 there was an increase in claims brought to the employment tribunal linked to banter of 44% (Thompson, and Czechowski, 2022).

Employees need to be aware of the laws that can be broken through misuse of social media. If electronic communication systems are misused there is a risk that claims can be brought for breach of confidentiality, defamation, discrimination (CIPD 2023b).

1 in 10
report bullying via
e-communication such as social
media (CIPD, 2020)

Data protection laws protect people from misuse of their information. Employees are reminded to abide by ABC Ltds policies with a focus on the social media and general data protection regulations (GDPR) policies when using organisational devices as well as using their own personal device (CIPD, 2023c). Breaches of GDPR may result in legal action.

Employees have the responsibility to communicate in the same manner online as they would through any other medium with whichever audience have access to the post (CIPD, 2014). As social media is more informal, it is possible to risk the data security of companies or individuals or compromise reputations unintentionally.

(CIPD, 2024)

UK employees

15% experienced bullying
8% reporting harassment

The boundaries between personal and business become distorted easily when using social media. Content can potentially be widely distributed through the differing social media channels. Even if content is private, inappropriate behaviour, derogatory or discriminatory statements about colleagues or the company may lead to disciplinary action and in cases of harassment civil charges.

Key Issues arising.

The Equality Act 2010 defines harassment as '*unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual*'. Whilst there is no legal definition of bullying; ACAS (2023b) describe it as '*unwanted behaviour from a person or group that is offensive, intimidating, malicious or insulting or is an abuse or misuse of power that undermines, humiliates, or causes physical or emotional harm to someone*'.

Bullying and harassment can be face to face or on social media. Cyber-bullying is a more common form than bullying or harassment at workplace social events (CIPD, 2022). Social media interaction may be seen by one party as banter or teasing, but by the other it may be seen as bullying, harassment or reputationally damaging to the business you are employed by.

Unwanted conduct may be a singular event, repeated behaviors or words and behaviours that affect the person (ACAS, 2023a). Employees are reminded that harassment is a criminal offence where damages may be awarded under section 3 of the Protection from Harassment Act 1997. There is no cap on what damages can be incurred should the claim relate to bullying or harassment; this would also be coupled with compensation for injury to feelings.

Even if employees believe their comments on social media or even in the workplace form workplace banter they need to be mindful that whilst some humour is needed to help boost morale the context of the jokes needs to remain out of the realms of offensive. Consider how it would be taken should it be repeated back to them and what defence could be made if challenged about the comments made. Remember what you or a colleague may see as 'banter' a judge may rule as harassment especially if linked to one of the characteristics protected under the Equality Act 2010 (Croft, 2022).

Key actions employees must consider from our policy are employees must not defame ABC Ltd or utilise offensive language in social media posts. Should employees promote that they are employed by ABC Ltd, they must be mindful of content being posted as content may be attributed to the company and be interpreted as ABC Ltd views (ACAS, 2023c). Should an employee post content that injures a third party and vicarious liability means ABC LTDs pays damages, these will be recovered through legal action against the potentially negligent employee (Lewis, Sargeant and Schwab, 2023).

Potential Actions:

Any staff member that has been found to have posted defamatory statements in relation to the company, its' employees or any known third parties will face disciplinary actions that may include dismissal.

It is possible for employees to be investigated, suspended, or even dismissed for action taken outside of work should there be any implication that ABC Ltd would support this view. This includes and is not limited to comments that may be 'banter' but could offend or discriminate against someone who may see or hear of said post.