

Are you Social Media Smart?

Do you think that your social media is none of our business? Yes? Then please don't make it our business!



Under the Human Rights Act (Article 10), you have the right to freedom of expression, and at ABC Construction we recognise that, but as an employer we are bound by our duty to protect all our workers against bullying and harassment. That can include online harassment or abuse if it is linked to work in some way (Equality and Human Rights Commission, 2020, p. 51-2; Pitt and Drew, 2022, p. 45).

There are multiple laws that ensure that we protect you and ensure that your working environment is a great place to be for everyone (CIPD, 2023), but these days you can't get away from social media, and sometimes what gets posted online might have an impact on how people feel at work. If comments or opinions online are derogatory or belittling to another person for a protected reason, or to a protected group, and this is directed at, shared with or seen by other colleagues, it might contribute to making the workplace an intimidating or hostile environment.

Keeping ABC Construction a great place to work!

To try and keep us on the right side of the law, and to make sure ABC construction is a great place to work when it comes to social media, we have a social media policy. As an employee, you need to comply with it. You will have agreed to do this when you first joined the ABC Construction family. We don't monitor employees social media, but if your social media account comes to our attention, it might be that your actions online are at risk of breaching the social media policy and could be harming the ABC Construction family in some way.

What counts as social media?

We consider the term 'social media' to include any apps or websites used for social interaction (Oxford Dictionary of English, 2010). This could include: Snapchat, WhatsApp, Facebook, TikTok and Instagram, although these are just a few examples – there are many more.

Bullying & Harassment – What is the law?

Three types of behaviour that are classed as harassment (Equality Act 2010, Section 26):

- Unwanted behaviour relating to a protected characteristic that makes another person feel humiliated or takes away their dignity, or, creating an environment that is intimidating, hostile, degrading humiliating or offensive. The Equality Act 2010 makes it unlawful to harass anyone in relation to seven out of the nine protected characteristics (Marriage and Civil Partnership and pregnancy and maternity are not included in the law on harassment) (Lewis and Sargeant, 2023, p. 118).
- Sexual harassment – unwanted conduct of a sexual nature that makes another person feel humiliated or takes away their dignity, or creating an environment that is intimidating, hostile, degrading humiliating or offensive.
- Less favourable treatment following sexual harassment.

Harassment doesn't have to be directed at someone for them to find it offensive and feel harassed. A man might find sexist jokes about women offensive, even though they are clearly not directed at him (Equality and Human Rights Commission, 2020, p. 20).

You also might not have intended to create a situation that made someone feel harassed, but if your actions had that effect, this still might be found to constitute harassment.

Equally, if someone intended to create an intimidating or hostile environment, or humiliate someone in relation to a protected characteristic, but did not succeed, they might still be liable for a harassment claim (ACAS 2023).

Protected Characteristic

Sex

Sexual Orientation

Disability

Gender Re-assignment

Race

Religion and Belief

Marriage and Civil Partnership

Pregnancy & Maternity

Bullying isn't defined in law, so might be anything that makes another person feel bullied – you might not realise you are doing something that makes someone feel belittled or humiliated (ACAS 2023a). Unlike harassment, it doesn't have to relate to the protected characteristics – anyone can experience bullying, but the law says that you shouldn't experience this, or any detriment, while carrying out your duties for your employer (CIPD, 2023; Employment Rights Act 1996, section 44).

Any of these things could be carried out either in person or online, and actions carried out against a colleague might become a matter for us to investigate, even if it happens outside of work (Equality and Human Rights Commission, 2020, p. 51-2).

Know your responsibilities

If you use social media, think carefully about who might see your posts – posting online is sharing in a public space (Raval, 2017). Potentially offensive content could be taken as bullying or harassment.

Think about the different kinds of social media apps you use and what for.



You may use Instagram in your private life, with no colleagues following your page, and no connection to your working life – this is perhaps less likely to become a work matter.



You might have an old Facebook page that you occasionally share on. You have ABC construction shown on your profile page as your employer. This connection with work could become a problem if you share or comment on something in a way that someone finds offensive. If they see the link to your employer on your profile, it might have the potential to damage the reputation of ABC Construction, or, they might choose to contact us to advise us of the offensive conduct of an employee, which could instigate an investigation as to whether the content breaches our social media policy.



You might also have a group chat on WhatsApp with your work team, where you make arrangements for jobs, and engage in some non-work-related chat as well. This type of social media is much more likely to become problematic.

Our social media policy sets out your responsibility not to harm the reputation of ABC Construction. If your social media shows you work for us, we don't want to be associated with bullying or harassment, offensive or obscene content, because that is not the kind of behaviour we would ever endorse.

Don't post about a bad day at the office online! We all have them, but complaining about colleagues or customers online could end up being even worse for you.

Make sure you know where to find the social media policy, and are familiar with it. ABC Construction review and update our policies regularly, so make sure you are familiar with any changes (Weaver and Warren, 2023).

Know the risks

Sometimes things are said on social media that you might not say in person – this could increase the likelihood of harassment taking place (Freer, 2018), so it's important to think before you post, about how what you say might affect anyone who might read it.

Bullying and Harassment can result in disciplinary action whether it happens in person or on social media. It does not need to happen in working hours or at work – if the action can be linked to work in some way, then it may be investigated (ACAS, 2023b).

Disciplinary action could result in sanctions including dismissal. If a case results in legal action, the consequences could be far worse, potentially both for you and for ABC Construction. If ABC Construction have to pay significant damages and spend time fighting a legal claim, this is less time and money to focus on what we do best.

Under the Equality act, an employee can be held directly responsible for harassment and discriminatory behaviour – this means that you personally could be held liable for damages (ACAS, 2023b).

What does harassment look like?

In the case of *Mr A Finn v The British Bung Manufacturing Company Ltd*, using "bald" as an insult was found to be harassment related to sex (Personnel Today, 2023).

In another recent case, a manager who was referred to as "an old fossil" won an age discrimination claim (People Management, 2024).



Ask yourself:

- Is there anyone who has not been included in this chat, who might now feel less part of the team?
- Is there ever any 'banter' in this thread?
- Do you know how people in the chat feel about this banter?
- Would you want the content of the chat shared with anyone outside the group?

Remember, messages can be screenshot and shared, so your words may not always be as private as you think.

In *Tahir v National Grid UK*, the complainant was awarded damages of nearly £360,000 following persistent sexual harassment, both in person and online (Brand, 2023).