



Employee comments on social networking sites: a Q&A

Article

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Q: I have found out that one of my employees has been making derogatory comments on a social networking site using the company's systems to access the sites. What should I do? What can I do legally?

A: The tidal wave of social networking sites has inevitably spilled over into the workplace presenting real challenges for employers. The main risks for employers are damage to their reputation, disclosure of confidential information and potential vicarious liability for any discriminatory behaviour or "cyber bullying" by an employee.

To safeguard against potential liability, it is important to have an effective electronic communications policy in place. Such a policy should include clear guidelines on "acceptable use", including reminders about dealing with confidential information and the extent that personal use is allowed (in the workplace or at home), highlight the consequences of non-compliance (including disciplinary sanctions, which may lead to dismissal) and make clear the nature and extent of monitoring.

Depending on the circumstances, you may therefore be able to take disciplinary action. If the comments are defamatory, there may be scope for libel proceedings or seeking an injunction to have the offending comments removed. If you can show the employee is in breach of contract and has caused quantifiable loss, you may also be able to sue for damages.

Some fear that companies may be overreacting to this increased level of knowledge about what employees say about work. Any action should therefore be coupled with an observance of an employee's right to freedom of expression, which arguably covers the ability to complain about work, provided it isn't discriminatory, damaging or libellous.

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