

Employment & Employee Benefit

Summary of Employment Law Relating to Social Networking Sites

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The use of Social Networking ("SN") sites and its consequences in an employment context is an uncertain and developing area of law at present. Given the technological age in which we live and the ease with which employees can access SN sites, it is now imperative that employers incorporate into their email and internet usage policies, provision for SN activity on the part of employees.

It is also advisable that reference be made to employees' activities on SN sites not only on work computers but also on personal, non-work computers and after working hours in circumstances where such activity may have the effect of bringing an employer's reputation into disrepute.

Posting of messages by employees on SN sites may very much be relevant to employers if such postings negatively affect the employer's reputation notwithstanding that it features on an employee's personal SN site or that the posting was made outside of working hours.

Whilst this may be regarded as an intrusion into one's right to privacy, it is important to note that the Irish courts in this context have not yet acknowledged a general right to privacy for an employee in the context of employment law. As there is an absence of regulation in this area, it is being addressed in a piecemeal fashion as legal cases arise in the courts and before labour law tribunals.

An employee's right to privacy may be compromised if she or he engages in SN activity which has the effect of damaging her/his employer's reputation.

The only reported Irish decision specifically dealing with SN activity by an employee is *Keenan -v-A Wear Limited [2007]*. This case involved the dismissal of an employee, who had posted profane comments on her friend's personal Bebo page concerning her Manager at work. The company conceded that no damage was done to its reputation as a result of the comments. However, the posting was in the public domain and linked to the company. Whilst the Employment Appeals Tribunal ("EAT") acknowledged that the comments posted on the Bebo site deserved strong censure and possibly disciplinary action, the comments did not warrant dismissal. The EAT did not deal with the existence and scope of the employee's right to privacy rather it determined that the dismissal was unfair on the grounds that the employee's comments did not constitute gross misconduct in the circumstances. The EAT noted that the comments made were disrespectful, inappropriate and damaged the employment relationship and it regarded the employee's own contribution to the dismissal as not insignificant.

There have been other reported Irish cases which have concerned email usage by employees. In the case of *O'Leary -v- Eagle Star Life Assurance Company of Ireland [2003]*, an employee was dismissed as a consequence of their misuse and/or abuse of email and internet, contrary to the employer's policy and acceptable practice. The EAT did not address the right to privacy of the employee rather it focussed on the dismissal procedures adopted by the employer and deemed the dismissal as unfair due to the employer's departure from fair procedures.

A similar case, *Mehigan -v- Dyflin Publications Limited [2001]* involved the dismissal of an employee because of their misuse of email to disseminate pornographic material. The EAT determined that the dismissal was unfair as the employer failed to have clear policies and a code of practice in place dealing with employees' use of email/internet and the consequences of its misuse or abuse.

It is beyond doubt that the EAT has identified and placed an onus upon employers to have clear policies in place regarding email and internet usage by employees. Notwithstanding the fact that there is to date only one reported Irish decision concerning SN activity by an employee, similar cases dealing with SN activity will inevitably follow in light of the prevalence of SN usage.

It is undoubtedly an evolving area of the law which further highlights the need for employers to review their internal staff policies carefully to ensure they adequately address SN activity on the part of employees both during and after working hours, the consequences and the disciplinary procedures in place in connection with such activity.

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