

Social networking sites

Can bad mouthing your employer put your job in jeopardy?

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The popularity of social networking sites such as Facebook, MySpace and Bebo has mushroomed in a very short space of time. It is rapidly becoming the most favoured way of socialising with your friends and colleagues, and also gives you an opportunity through "blogging" to publish your opinions and vent your frustrations- including on work issues.

So, this is your own personal space on the social networking website expressing your own personal views and opinions. There should be no repercussions then, if you decide to bring to the forum discussions about your work and work colleagues. Well, you are wrong. There are potential repercussions from your employer - whether you blog within work hours or in your own personal time.

In every contract of employment, there is an implied term of trust and confidence between an employer and employee. Employees have a further implied obligation not to bring their employer into disrepute. If you make a derogatory remark about your employer on your profile/blog, then libel proceedings can be brought against you. Furthermore, such action could result in your being disciplined or dismissed as a result of a breakdown in trust and confidence.

The first benchmark case where this happened in the UK was in 2006 when a Waterstone's employee was "dooced" - a specific term used for dismissal resulting from the contents of a blog- for criticising his boss online. Although the blogger was ultimately successful in his appeal because the blog was not shown to be overly draconian, the risks are clear. There have since been numerous similar cases where employees have been dismissed for crossing the line. In one case, a Delta Air Line attendant brought legal action after she lost her job apparently for posting "inappropriate images" of herself wearing company uniform. In another case, a British secretary working in France was dismissed because she told of anecdotes about office life and admitted lying to take time off.

The interesting point in this case was that the secretary used a disguised name and never mentioned the company direct. The employer said this didn't matter as everyone knew who she was and what company she was blogging about.

It is unfortunate if the use of social networking sites becomes constrained in this way. The whole ethos behind such sites is to provide an outlet for free and expressive opinion. Most employees would think that you should be entitled to say what you like as long as the business of the company is not affected. Indeed, the more forward thinking employers may also look at such sites as a positive thing-after all it puts a human face on the company. But as always, there is a line that may be crossed and if you want to keep your job, you need to make sure you do not cross that line.

As well as overly criticising your employer, you should not be seen to be bad mouthing your work colleagues either, and this will include overtly racial or sexual discriminatory views. Employers have a legal obligation to protect their employees from discrimination on grounds of gender, race, religion and sexual orientation and they are unlikely therefore to be seen to condone unacceptable remarks from other employees.

So, how do you know what types of blogging should be acceptable or not? After all employers are powerless to stop an individual blogging altogether. It is easier for employers to control the situation if you are blogging at work as most companies now have an internet policy which governs the use of your PC. Some employers specifically ban the use of Facebook at work and regularly monitor their employees internet activity.

The use of blogging outside work is more problematic as there is no direct monitoring tool by the employer. Some employers are, however, introducing a more specific "blogging policy" which specifically covers the situation outside work and which introduce clear limitations about the permissible contents of a blog. Such policies also reserve the right to take action if employees overstep the mark. But even without such policy, as has been seen in some of the test cases, the employer can (and has) still taken the appropriate action.

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The law in this area is not developed. Perhaps the best advice for the individual is that if you would not say something direct to either your employer or someone you work with, then you should think twice before blogging the same views on a social networking site. This also applies once you have left your job. You may be subject to post-termination restrictions such as confidentiality, and the non-disclosure of trade secrets. In extreme cases, you could even face a claim for defamation.

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It is not in an employer's interests, of course, to bring a legal claim over a blog that may have only been seen by a few of the blogger's contacts. The claim, conducted in a public forum, would project the bloggers views to a far higher audience than the initial blog could ever have done. But as the blogger, who would really want to take the risk of such a claim against them- especially if you have a prosperous future career in mind!