



WINTER 2011

Spotlight

Employment Winter 2011 Issue

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- [Why your business needs a social media policy](#)
We take a look at some of the risks associated with social media and why it is important to set out clear guidelines for employees.
- [Holiday issues in the workplace](#)
We review the current legal position in this area and aim to answer some of your most common questions.
- [News Round-Up](#)
Our usual concise round-up of other interesting developments.

Why your business needs a Social Media Policy

Thanks to Twitter, Facebook and LinkedIn employees are now communicating more and more with the outside world, but what if what is said is bad for business? We take a look at some of the risks associated with social media and the benefits of implementing an effective policy.

For those of you who are yet to jump on the social media bandwagon, a brief introduction is required. Social media is a form of technology that enables online users to interact and share information (including video, photographs, text and audio) publicly or privately with one another. It includes a variety of communication tools which are internet-based, such as Facebook, Twitter, blogs and wikis.

The use of social media by individuals in and outside the workplace is widespread and continues to proliferate. Employees can sometimes be naïve about social media – they think that their posts and tweets are only being read by friends. However, people's friends on Facebook are more often than not contacts they have met briefly on one or two occasions. Comments on social media sites can spread into the wider world like wildfire.

The risks

Social media is covered by exactly the same laws that govern comments printed in newspapers and magazines. Improper and inappropriate use by employees carries substantial legal risks for the employer, including:

- Potential unauthorised disclosure of the employer's confidential and proprietary information.
- Liability for defamatory comments posted by employees.
- Infringement of third party intellectual property rights.
- Cyber bullying by an employee or manager against another employee, which can sometimes amount to a criminal offence, if for example, racial hatred is incited.

The importance of a social media policy

A social media policy educates employees and sets down basic ground rules. It also allows the employer to minimise the risks associated with employee use of social media by proactively defining acceptable and unacceptable uses in the context of the employment relationship. It can apply to the use of social media for both business and personal purposes, whether during working hours or otherwise. It can also apply regardless of whether the social media is accessed using the employer's or the employee's equipment.

However, a policy is only as good as its enforcement so it must be made widely available and enforced consistently, to allow an employer to rely on the policy in the event that it is breached by an employee.



What should a social media policy include?

An employer should carefully consider the purposes and objectives of a social media policy. This will involve striking a balance between the nature of the employer's business and the employer's attitude towards social media use in the workplace. For example, an employer should consider whether employee use of social media in the workplace will be discouraged, encouraged or merely tolerated. Also, it may be legitimate for some employees to use social media as part of their day to day job, but in any event, this should be carefully regulated by the employer.

A social media policy should make it clear that employees must not divulge confidential information about the business, such as the names of customers, clients or suppliers, unless authorised by the employer. A social media policy can also state that employees must not post comments about the business that do not represent the views of the business. It should also be made clear that abusive comments are not to be tolerated and might create legal liability.

Where employees use social media for business networking purposes it may also be appropriate to clarify the ownership of any connections made by employees via sites such as LinkedIn.

Other considerations

An employer may need to update a number of its existing policies such as the recruitment or internet policy to include social media considerations. It might also be worth considering setting up internet monitoring and alerts to maintain awareness of discussions and specific comments made about the employer, the employees and business contacts (bearing in mind that such monitoring must be proportionate and may be subject to rules regarding data protection). Once implemented, it will be important to regularly review and update the policy to ensure that it is kept current with changing law, technology and business practices.

A social media policy does not have to be long and complicated; however it should be sufficiently comprehensive to adequately protect the employer from potential legal action.

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Holiday issues in the workplace

With Christmas just around the corner we aim to provide a brief overview and answer your most common questions.

The Christmas period is upon us and many workers will be looking forward to spending some quality time with their families. Juggling each individual's request for annual leave, whilst also seeking to maintain adequate cover, can be tricky for many employers. Some businesses shut down over the Christmas period or for a fortnight during the summer months and insist that workers use their annual leave entitlement during this time. This is perfectly acceptable as long as such a right is included in the contract of employment. However, it might be a completely different situation for small businesses who simply cannot afford to shut down for an extended period of time.

To alleviate any problems that may arise in respect of the booking of holidays, employers should ensure that they have an adequate holiday policy in their contracts of employment or staff handbook. Under the Working Time Regulations 1998 ("the Regulations"), a full-time worker is entitled to a minimum statutory holiday entitlement of 5.6 weeks (28 days), which includes bank holidays. Unless otherwise agreed, a worker's holiday year will run from the day that the employment began.

Can an employer refuse a worker's request for annual leave?

In short - yes. The amount of notice to be given to refuse a request is at least as many calendar days before the proposed leave is due to start as the number of days which the employer is refusing. The Regulations also allow an employer to require a worker to take leave on a particular day by giving them notice. However, employers should take care when refusing holiday in order to avoid a discrimination claim from a group of members with a protected characteristic, such as a certain religious group wishing to celebrate a special festival. There is no statutory obligation on a worker to provide reasons as to why they require time off, but if they do state that such time off relates to their religion or belief the employer must be able to objectively justify any refusal.

It is important to note that the statutory annual leave entitlement may not be replaced with payment in lieu of holiday, except where the worker's employment is terminated. An employer who seeks to pay a worker in lieu rather than allow them to take their holiday will be in breach of the Regulations. Employers should encourage their workers to take time off, but workers are not entitled to holiday pay if they forego their holiday entitlement by choice, as this would create a financial incentive for them not to exercise their holiday rights.

What happens if an employee is sick whilst on holiday?

This can be a common issue in the workplace and one which, to some extent, remains ambiguous in terms of the legal position. In 2009 the European Court of Justice (ECJ) ruled that where workers were unable or unwilling to take annual leave due to a period of sick leave, they should be able to take their annual leave at another time, subject to the needs of the business, even if this means taking the annual leave in a subsequent holiday year. The ECJ's decision suggests that a worker on sick leave cannot be forced to take annual leave whilst off sick if he or she does not wish to do so. Although the ECJ case involved a worker who fell ill before his holiday and not during it, the decision has been widely interpreted as allowing employees to reschedule leave where they fall ill on holiday.

To avoid any uncertainty the employer should clarify the position in its holiday policy. By including conditions with which the employee must comply, such as providing a medical certificate, the employer can reduce the risk of potential abuse by employees. The policy should also state that the employee should return to work as if they had been on annual leave and then agree further holiday dates with the employer, as opposed to adding extra days to the end of the period of leave.

What about carrying over?

Contrary to the ECJ's ruling, the Regulations state that the minimum holiday entitlement may only be taken in the leave year in which it is due. However, the Regulations also provide that employers may allow any additional statutory annual leave to be carried over into the subsequent holiday year. The ECJ has held that any refusal to allow leave to be carried over will amount to an unauthorised deduction of wages by the employer.

It is anticipated that the UK Government will amend the Regulations within the next year or so to ensure consistency with European legislation. In the meantime, employers should have in place a clear policy to avoid potential abuse and to ensure employees are treated consistently.



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Government to reform employment law



After rumour upon rumour, Business Secretary Vince Cable has finally announced the government's proposals for a radical overhaul of employment law. The main proposals are:

- The qualifying period for unfair dismissal is to increase from 1 year to 2 years from 6 April 2012.
- Consultation will take place on the proposed introduction of protected conversations between the employer and employee, save that such conversations will not extend to protect any discriminatory acts.
- Compulsory lodging of all employment claims through ACAS for an attempt at mediation before they can be lodged with the Employment Tribunal.
- A call for a possible consultation on reducing the minimum period for redundancy consultation to 60, 45 or 30 days.
- Employment judges to sit alone in unfair dismissal cases.
- CRB checks to be transferable from job to job, removing the need for a fresh application with each new job.
- Maternity and paternity leave to be brought in line with current modern values, with emphasis on greater involvement for fathers.
- Options for a rapid resolution scheme to encourage simple claims to be settled within three months.
- Amendment to section 147 of the Equality Act 2010 with a view to clarifying that compromise agreements can be used to settle discrimination claims.
- A fundamental review of the employment tribunal rules of procedure to include changes to costs and deposit orders.

Check out the next issue of **Spotlight** for a lot more detail on these developments!

Gender pay gap narrows

The gender pay gap between the median full-time hourly earnings of men and women has narrowed to less than 10% for the first time, according to the Office for National Statistics (ONS).

The ONS *2011 Annual Survey of Hours and Earnings* shows the gap narrowed from 10.1% in April 2010 to 9.1% in April 2011, with the earnings of women increasing faster than those of men over the last year.

New proposals for dealing with sickness absence

A number of proposals to reduce sickness in the workplace and the associated costs have been made by Dame Carol Black and David Frost CBE in their report *Health at work – an independent review of sickness absence*. The report recognises that GPs do not have strong enough incentives to consider state and employer costs of absence. However, employers have no choice but to rely on the fit notes provided by GPs as justification for sickness absence of over 7 days. The report therefore recommends that, after an employee has been absent for 4 weeks they should be referred to a new Independent Assessment Service for expert advice. It is anticipated that this could provide efficient and specialist advice about employees on long-term sickness absence or with complex health conditions, including how a return to work can be facilitated.



Court clerk convicted under the Bribery Act 2010

Court clerk Munir Patel has been sentenced to six years' imprisonment after pleading guilty to bribery and misconduct in public office. Patel admitted taking a £500 bribe to "get rid" of a speeding charge for someone. This first conviction sends a clear message: bribery and corruption will not be tolerated in any shape or form.

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Employment law is changing...

...all the time. The Dolmans Employment Team is able to offer cost effective, bespoke training packages to ensure that you are able to keep up with the latest developments in the law and to manage your employees effectively. Our courses are interactive and practical, aimed at getting the key points across without getting "too bogged down" in unnecessary detail.

The Dolmans Employment Team is able to offer training courses in the following areas:

- Dispute Resolution and Grievances in the workplace
- Absence Management
- Equality and Diversity (including all aspects of discrimination)
- Redundancy planning and procedure
- Restructuring programmes
- 'Family Friendly Rights' (including dealing with flexible working requests)
- Stress and Bullying in the workplace
- TUPE Transfers

Our courses can be tailored to suit your individual business needs. We are able to provide training at your premises or elsewhere over a single morning/afternoon/evening or over a number of days. We are mindful that disruption to your business needs must be kept to a minimum.

For further information on training courses available, please do not hesitate to contact Jennifer Cottle jenniferc@dolmans.co.uk or Bethan Walsh bethanw@dolmans.co.uk.



Dolmans' News

New employment lawyer joins Dolmans



The Dolmans Employment Team has recently been joined by assistant solicitor, Bethan Walsh. Bethan studied Law and Politics at Cardiff University before completing her training with a Cardiff law firm. Bethan intends to become an integral part of the Dolmans team by utilising her commitment to achieving good results for both her clients and the firm.

Dolmans does Monte Carlo

The Dolmans team recently attended Cancer Research Wales' Monte Carlo themed fundraising dinner at Cardiff's City Hall, along with some of our clients and contacts. A great night was had by all, with lots of chips being won at the poker table – unfortunately, it was "just for fun" and no actual money changed hands! The evening raised £4,500 for Cancer Research Wales, which is a fantastic ending to a very enjoyable evening.

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What we do - Employment Law Services

Dolmans is a dynamic law firm achieving outstanding results for its clients. We have gained a reputation for our expertise and professionalism. Our integrity is an essential element of the way in which we work and we are highly skilled in the delivery of our services.

The Employment Team is the chosen representative of many companies, public authorities and senior executives in employment litigation, dispute resolution and the provision of non-contentious advice.

However, we can offer more than that. The Dolmans Employment Team advises its clients proactively – reducing the risks of problems arising in the first place and dealing with any that have arisen promptly before they get any worse.

We are able to provide the following services to our clients:-

- **Employment Litigation.** Dealing with claims in the regional Employment tribunals throughout the UK and the Employment Appeal Tribunal.
- **Contracts and Policy Documentation.** We are able to review your existing contracts of employment and policy documents to ensure full compliance with the legislation in place today. Alternatively, we are able to provide fresh documents individually tailored to meet your business objectives.
- **Business Restructuring and Termination.** We can advise you on a step-by-step basis through a restructuring or redundancy programme or the exit strategy of a senior employee.
- **Helpline Consultancy.** Urgent problems demand urgent answers. Dependant upon your specific requirements, we are able to provide a one-stop point of contact for urgent employment law and HR advice for an agreed fixed monthly retainer.
- **Employment Training Services.** We are able to offer interactive training seminars to you and your staff covering all employment law issues. The focus of our training is to provide clear and concise practical advice, telling you what you need to know.

Dolmans is able to provide fully-integrated commercial legal services to our clients, including Commercial Dispute Resolution and Litigation, Mergers and Acquisitions, Debt Recovery and Commercial Property services.

For full details of the commercial services Dolmans is able to offer, please contact Alison Henders-Green, Partner alisonhg@dolmans.co.uk.

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Dolmans is a fully integrated commercial law firm. To find out more about us go to www.dolmans.co.uk.

If you would like this document in a different format please contact Keren Judd kerenj@dolmans.co.uk.

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