



**ENTREPRENEURIAL
BUSINESS LAWYERS**

THE IMPORTANCE OF BUSINESSES HAVING A SOCIAL MEDIA POLICY

INTRODUCTION

The use of social media has grown rapidly over the last decade. In January there were 2.4 billion visits to social networking sites in the United Kingdom. 30 million people in the U.K. are now on Facebook. The website has seen a 40% increase in daily usage over the past 12 months with the average user spending more than

55 minutes per day on Facebook. More than 60 million status updates are made per day. Users accessing Facebook via their mobile device has grown by over 200 percent. On average, there are more than 7 billion pieces of content shared on the site weekly. This figure has risen from last year, when it was 3.5 billion. Other social media sites are growing rapidly; there are more than 175 million registered Twitter users. The number of Tweets per day has rocketed to more than 95 million.

With such high usage of social media sites it is inevitable that their use could creep into the workplace causing a number of headaches for businesses as a result. The recent case *Preece v JD Wetherspoons Plc* highlights the potential risks posed by the use of social media and demonstrates the importance that businesses

have a clear policy on its use in order to avoid its pitfalls.

PREECE V JD WETHERSPOONS

Miss Preece was dismissed from her job as a Shift Manager after she used Facebook to rant about two abusive customers. Preece had signed an agreement that implemented the company policy that her employer reserved the right to take disciplinary action should the contents of any blog including pages on Facebook "be found to lower the reputation of the organisation, staff or customers and/or contravene the company's equal opportunity policy." She was dismissed on the grounds that her comments amounted to gross misconduct.

Preece had been subjected to a torrent of insults from two customers, Sandra and Brian. They also threatened her with a cane. She followed the correct procedure and asked them to leave. It was acknowledged by her employer that she had handled the very difficult situation professionally. After they had left, the Preece received three abusive telephone calls, from an anonymous caller, believed to be Sandra and Brian's daughter. It was these events that led Preece to update her Facebook status while she was at work. A number of abusive comments

were made and the identities of the customers were exposed. Her status and subsequent comments were available, not to between 40 and 50 people as she had thought, but to about 646 people, including the customer's daughter.

Preece claimed that her actions did not amount to gross misconduct because the comments that she made were restricted to her private Facebook page and were not on her public profile. She maintained that the disciplinary action taken by her employer was not reasonable. Preece believed that her Facebook page was limited to only her friends and so could not have brought her employer into disrepute.

The provision of the European Convention of Human Rights Article 10 that states everyone has a right to freedom of expression. However, this was not an adequate defence as it was held that her employers had been justified in dismissing her as Article 10(2) provides the caveat that freedom of expression is restricted for the protection of the reputation of others.

PRIVACY SETTINGS

Social media sites are rarely private. The recommended privacy settings on Facebook mean that everyone can see your status. Even if you choose the maximum security settings, thereby trying to ensure that only your Facebook friends can see these parts of your page the Facebook Terms note "...no security measures are perfect or impenetrable."

Likewise, the Twitter privacy policy states that:

"Our Services are primarily designed to help you share information with the world. Most of the information you provide to us is information you are asking us to make public."

OTHER EXAMPLES

Preece was not the first person to bring her employer's reputation into disrepute by her use of a social media forum. These types of incidents are not uncommon. There are various

examples of employees' rants becoming public via social media sites:

- In 2005 Joe Gordon was fired by Waterstones for colourful comments he made about his employers on his blog the Woolamaloo Gazette.
- In January 2009 employees of Tesco faced disciplinary action when they used a Facebook group, called 'Tesco Employees Could Rule The World', to post defamatory comments about their customers.
- Staff at PC World, Currys, Virgin Atlantic and British Airways have also been in the news for mocking customers' "stupidity" of Facebook.

SOCIAL MEDIA POLICY

JD Wetherspoons Plc had a detailed policy in place and as a result were able to take what was deemed to be appropriate disciplinary action.

When considering a policy on the use of social media the following should be taken into consideration:

- How much personal use can be made at work, if any. A Glasgow accountant who was fired for excessive use of the internet was awarded almost £40,000 damages from an Employment Tribunal;
- Confidentiality issues, 'trade secrets', access to organisational information;
- When to attach disclaimers;
- Prohibition of inappropriate messages, for instance any that might cause offence or harassment on grounds of age, sex, race, disability, age, religion;
- Being aware of copyright and licensing restrictions that might apply to downloaded and forwarded material;
- What monitoring, if any, will be carried

out;

- What might happen if a breach of the policy occurs.

CONCLUSION

Recently it has been expressed that there is a need for businesses to catch up with the development in the use of social media. There could be serious legal implications for businesses that employ people who make defamatory comments on social media sites. Preece v JD Wetherspoons Ltd illustrates the importance of businesses having a clear policy towards social media sites in order to protect themselves from the potential pit falls.

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