

Employment Law

Legal update: June 2011

Social media is now part of life. There is increasing overlap in the use of social media for both personal and business use. This increases the risk that employees will fail to distinguish between communications that are appropriate to work and those that are not and also that inappropriate material may go “viral”. In this rapidly evolving environment it is essential for employers to produce relevant guidelines for employees about the use of Facebook and similar sites. This month we look at the lessons that can be learned from a case about an employee whose comments on Facebook lead to her dismissal for gross misconduct.

Preece v JD Wetherspoons plc

Miss Preece was employed by Wetherspoons as a pub manager. Two customers verbally abused and physically threatened her. Later, whilst still on duty, she made inappropriate comments about them on Facebook.

The daughter of one of the customers contacted Wetherspoons to complain about the Facebook comments. When questioned Miss Preece admitted making the comments saying she was angry and upset and thought her privacy settings meant only her friends and family could see the comments.

Miss Preece was dismissed for gross misconduct. Wetherspoons took the view that her comments on Facebook about customers and which identified the pub chain breached their social media policy and lowered their reputation. Miss Preece appealed but was unsuccessful. An Employment Tribunal found that her dismissal was fair.

Wetherspoon’s social media policy stated that blogging which lowered the reputation of the company, staff or customers and/or contravened the equal opportunities policy, would result in disciplinary action. Failure to comply with the social media policy was identified in the disciplinary policy as gross misconduct. The disciplinary policy also stated that acts committed outside work which either had an adverse effect on the employee’s suitability for the job, or amounted to a serious breach of trust, or affected employee or customer relations or brought the company’s name into disrepute, would be treated as gross misconduct.

Miss Preece used Facebook whilst still on duty. Wetherspoons said they would have treated her in the same way if she had been at home. (In *Gosden v Lifeline Project Limited* an employee who was dismissed for sending an offensive email, containing racist and sexist material, from his home computer to his colleague’s home computer was found to have been fairly dismissed.)

This is a Tribunal decision and while it is not binding precedent, it indicates how the Tribunals may approach such cases. It demonstrates that if the employer is to be able to act in such cases to protect its reputation and to be seen by customers to respond effectively to complaints its essential to have a well drafted social media policy. The case also shows how important it is for policies to be backed up with relevant training. Such training might include instruction about the power of social media tools. Miss Preece may not have lost her job if she had appreciated both that it was inappropriate to comment negatively about customers on Facebook and how widely read her comments would become.

Practical tips on what to include in a social media policy

A social media policy should recognise the increasing use of social media sites. However, employees should be warned that use of such sites can pose risks to the employer’s confidential information and reputation and can put the employer at risk of failing to comply with its legal obligations. The policy should make clear what access to social media sites is permitted whilst at work and point out that comments made outside work could be harmful to the company and may lead to disciplinary action. Employees should be reminded that they must not disclose confidential information or make derogatory or discriminatory comments about the company or other employees or customers. The policy should confirm that failure to comply with its terms will lead to disciplinary action and, in serious cases, dismissal.

If you would like us to draft a Social Media Policy for your organisation, please contact me or another member of the employment team.



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