

Social networking traps to avoid in the workplace

There are obligations both ways in an employment relationship.

Social media is not a free zone. It can impact on your employment relationship.

In one example, an employee resigned following racist comments made on her Facebook page about her employer.

The key obligations of an employment relationship are trust and confidence, and a duty of good faith.

Consider what you put up on Facebook, Twitter, LinkedIn, a blog, or any other social media site or internet publication.

The information (once posted) is able to be forwarded and copied by others and so is out of your control and not easily removed.

It can carry on causing you harm long after you wished you had not posted it.

Comments on various sites attacking someone have often been removed before the mass media print it up, but the information is still available.

In an employment situation, you are obliged to be active and constructive in establishing and monitoring a productive employment relationship. This includes being responsive and communicative.



LEGAL MATTERS

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You will not be acting in good faith if you post or publish aggressive or derogatory comments about your employer or employee online.

If you have an issue, you have an obligation to try to resolve it directly with them.

Such comments may also be in breach of the policies of the employer and can result in disciplinary action and/or compensation awards.

Employees are not prevented from communicating to another person a statement of fact, or a reasonably held opinion, about an employer's business.

This, however, would not permit an employee to make general derogatory comments.

The obligations of trust and confidence would give an employer grounds to dismiss in the event such postings were made online.

The rationale behind that is the poor reflection that such conduct

has on the employer.

Although Facebook, Twitter and blogs often serve personal purposes, some real crossover exists between your personal and professional lives where the internet is involved.

Employers can also act if your posts can bring them into disrepute, even if the posts are just about you and not the employer or co-workers. Examples include employees posting photos of themselves nude, drunk or in inappropriate uniforms.

The employees could be identified and associated with the employer and action could be taken, despite the events not being otherwise work-related.

Employers have similar obligations not to make abusive or derogatory comments about their employees.

Posting comments online would provide good grounds for a claim for compensation.

Examples of recent cases include employers making comments about their employees' lack of intellect and sexual orientation.

Another situation where posts on social media got the employee fired was when an employee sought leave to attend an out-of-

town event, but leave was declined. The employee then claimed he was ill and did not attend work.

Photos of him at the event were posted on Facebook. The employer dismissed him for misconduct and this was upheld by the Employment Relations Authority, despite the employee's claim he was entitled to recuperate at the event. Think about your obligations before you post and make sure your friends don't drop you in it with what they post.

C & J ask whether their employers have to disclose how many sick leave days they have remaining.

Yes, information about how many sick leave days you have left is personal information you are entitled to. Your employer is obliged to keep records of your sick leave (including days remaining) and is obliged to tell you that information, on request.

They also have a duty to be open and communicative with you about things such as your legal entitlements.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733 484. If you have a legal inquiry, email Alan on aknowsley@raineycollins.co.nz.