

# FACT SHEET



## THE EFFECTS OF SOCIAL NETWORKING

Over the last few years, the use of social networking sites such as Facebook and Bebo has become a daily habit for millions and statistics show that usage in the work place is increasing.

Monitoring the use of such sites and taking appropriate disciplinary action is not straight forward – especially in the absence of specific procedures.

This document highlights some of the main issues employers should consider in relation to the use of such websites in the employment context.

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### WHEN RECRUITING NEW STAFF, CAN YOU CHECK UP ON THEIR ON-LINE PROFILES?

Yes but beware of the risk that doing so could expose you to claims of discrimination particularly if the network profile contains information about the applicant's race or ethnicity, sexual orientation, family status, religion, physical health, age etc.

### WHAT ARE THE RISKS OF ALLOWING EMPLOYEES TO USE SOCIAL NETWORKING SITES AT WORK?

Some of the more obvious risks are likely to arise from an employee using the sites inappropriately, for example;

- using the sites during working hours;
- referring to employees in a derogatory manner – this could evidence a culture of bullying and harassment;
- referring to your business in a derogatory manner which would bring it into disrepute;
- posting confidential information about your business on the website.

Taking disciplinary action against an employee in these circumstances will not be straightforward in the absence of a well drafted policy that governs employees' use of such sites. Where employees use the site outside working hours, employers will have to consider whether it is reasonable to take disciplinary action against them particularly as doing so, in the case of public sector employers, could contravene their human rights.

### CAN YOU DISCIPLINE OR DISMISS AN EMPLOYEE FOR A REASON CONNECTED WITH THEIR ONLINE ACTIVITIES AT WORK?

Yes. When at work, employees should be working. However, taking disciplinary action might be difficult where no appropriate policy is in place.

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## HOW COULD YOU AS EMPLOYERS BE POTENTIALLY LIABLE FOR AN EMPLOYEE'S MISUSE OF SOCIAL NETWORKING SITES?

An employer could be vicariously liable for an employee's harassing or discriminatory on-line behaviour towards a fellow employee.

## CAN YOU MONITOR EMPLOYEES' ONLINE ACTIVITIES?

Yes, provided there is a clear policy notifying the employees that you reserve the right to do so.

## CAN YOU CONTROL THE USE OF NETWORKING SITES OUTSIDE WORKING HOURS?

Most employees would argue that activity carried out in their own time is not something that can legitimately be the concern of the employer. However, inappropriate use of social networking sites outside of working hours could still justify disciplinary action (e.g. where there is disclosure of confidential information or evidence of bullying behaviour towards an employee).

## RECOMMENDATIONS

- Introduce a policy governing the use of social networks at work and clarify the extent to which you will take into account any inappropriate use outside work.
- Make sure that the policy you introduce does what you want it to do. Do you want to;
  - Prevent employees using office equipment for personal use?
  - Restrict access to sites e.g. Facebook and Bebo?
  - Allow access to networking sites only outside working hours or during breaks?
  - Monitor the on-line actions of employees.
- Amend your Disciplinary Policy to reflect the Social Networking Policy.
- Clarify in the Equal Opportunities/ Confidentiality Policy that posting derogatory comments about fellow employees on social networking sites is not acceptable.

Whichever option you may adopt, a balance should be struck between personal privacy and freedom of expression but also ensuring that your business is sufficiently protected from future risk.

**Capital Law LLP**  
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**\* Please note that this note does not amount to legal advice and should not be relied upon as such.**