

Employment law Update

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How to Tackle the Cyber Bully!

The use of social networking websites such as Facebook and Bebo has already caused discourse in the playground and forced schools to implement anti-bullying measures to counteract the problem of what is now termed "cyber bullying". The websites allow users to create their own cyber profile and to post comments on their own or other user's profiles and to join online discussion groups.

The Y Generation is highly IT socialized, which means their entry into the workforce is presenting a new headache for employers. A critical question for many employers is how to deal with this change in culture. Is it legitimate to access these sites to seek information on a prospective candidate and what should an employer do when the use of such sites negatively impacts on the workplace and work relationships?

How to Tackle the Cyber Bully

Employers should be aware that merely restricting or prohibiting access to social networking sites will not solve the wider problems of cyber bullying. Users of these websites frequently discuss the various activities of their day-to-day lives and inevitably this may lead to discussions in relation to their work, employers and work colleagues. This creates a problem for employers when the comments are of an inappropriate, defamatory or discriminatory nature or when the websites are used to bully, harass or sexually harass another employee.

Employers should be aware that if a claim of discrimination, bullying, harassment or sexual harassment is brought by an employee, the employer could be held to be liable for the online actions of the offending employees (made during or outside working hours) if they do not take action against it. Therefore, if a complaint is made by another employee about inappropriate postings which are perceived to be of an offensive nature, then the employer is obliged to investigate the complaint, in accordance with their existing grievance and disciplinary procedures.

Breach of Privacy?

Employers cannot, of course, restrict employees' private use of these sites outside of working hours, particularly if they are using their own computer. It would not be good practice for an employer to monitor employees' cyberprofiles on a regular basis and to do so would probably entitle an employee to claim that their rights to privacy and freedom of expression as under the European Convention on Human Rights have been breached.

However, there are some situations where employers may be obliged to intervene and investigate the use of social networking sites, particularly when employees make complaints about comments on these websites. Employers should therefore protect their business by ensuring that their internal policies and procedures cover not only use of working time to access sites, but also that employees are made aware

that potential disciplinary action could ensue as a result of inappropriate contributions to such sites. This is no different to how businesses have treated other tools for communication and collaboration such as email.

Amend Existing Policies

Amendments to existing policies are recommended and employees should be put on explicit notice that they should refrain from making any postings in relation to the organisation, their employers or colleagues and should also be put on notice that inappropriate, defamatory or discriminatory postings in relation to the organisation, their employer or colleagues will be treated as misconduct, regardless of whether they are posted during or outside working hours and may result in disciplinary action, up to and including dismissal.

Netrepping - Recruitment

Many employers are now taking advantage of these websites to vet job candidates. This practice is known as netrepping. Individuals should be aware that the contents of their social networking profile may be publicly available and may impact on their reputation and future employment prospects. These online profiles can provide potential

employers with access to a myriad of personal (and probably irrelevant) information about a prospective employee in a matter of seconds.

Employers are advised to exercise caution prior to undertaking any such online investigations, as the information obtained about a candidate may influence their opinion or impact upon the hiring decision.

The reality is that if information concerning protected characteristics under the Employment Equality Acts (such as race, gender, age, sexual orientation, etc.) is disclosed on a website and the individual is not hired or perceived not to be hired because of this, an employer may be exposed for a claim under the Acts.

Landwell's dedicated Employment Law Unit is currently assisting clients in updating their existing policies and procedures to incorporate the issues raised in relation to the use of social networking websites. We can also advise employers in dealing with investigations into instances of bullying and harassment and any contentious issues, which arise out of such investigations.

Landwell Employment Law Unit

If you would like to discuss this further or if you require specific advice on the implementation of any redundancy procedures, you may contact any member of the Landwell Employment Law Unit.



Colleen Cleary Partner
Head of Employment Law Unit
Email: colleen.cleary@ie.landwellglobal.com
Direct line: 01 792 6110



Sinead Dunne Solicitor
Email: sinead.dunne@ie.landwellglobal.com
Direct line: 01 792 6422



Deirdre O'Halloran Solicitor
Email: Deirdre.ohalloran@ie.landwellglobal.com
Direct line: 01 792 6461

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"Colleen Cleary's team is praised for turning work around in an efficient manner, working with urgency and pace and demonstrating legal expertise of the highest quality" (The Legal 500 - 2007).