

Business News

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Workplace social media use policies

Facebook, MySpace, LinkedIn and various other social networking sites are a fact of life for millions of users. Facebook alone claims to have 400,000,000 active users. The line, however, between personal and business use is becoming increasingly blurred and employers need to be aware of the potential problems social networking can create within the work place. Many businesses block employees access to social media sites, whilst others take the view that employees using social media sites, are potentially "ambassadors" for their organisation.

Businesses seeking to benefit from using social media, whilst minimising the potential risks, should ensure that clear work place rules and procedures are put into place dealing with, for example:-

- access – who do you want to have access to social media in the work place and to what and when?
- privacy issues – how will you



protect confidential business, client/supplier and employee information?

- monitoring – how can you monitor usage of social media in the workplace?
- responsibility – who is to be responsible for the implementation and management of social media?
- consequences of breach – how will

you deal with violations of policy?

We recommend implementation of a clear social media policy alongside similar policies dealing with internet and email use.

For further advice please contact Mark Robinson (markrobinson@hhlegal.co.uk) on 01704 531991.

Inside this issue

<i>Workplace social media use policies</i>	1
<i>Reasonable or best endeavours - is there a difference?</i>	2
<i>New EU cookie law</i>	2
<i>Accrual of holidays during sickness leave</i>	3
<i>Help disrupt fraudsters by reporting spam e-mails</i>	3
<i>What does it take to make a contract?</i>	4
<i>Increase in tribunal awards</i>	4

Welcome to Hodge Halsall's Newsletter For Business and Commercial Clients

This Newsletter is designed to summarize various areas of law that may impact upon your business. It is a periodic publication of Hodge Halsall LLP and is intended for legal guidance only. It is not to be construed as a substitute for legal advice. For advice specific to your circumstances please contact your Hodge Halsall representative.

We are interested in your opinion. If you have any suggestions about how we can improve Business News or if you would like us to cover a specific topic please contact: Derek Alman at derekalman@hhlegal.co.uk or call 01704 531991.

Reasonable or best endeavours – is there a difference?

Contracts regularly include clauses obliging one or both parties to use their “best endeavours” or “reasonable endeavours” to satisfy an obligation. Do these two phrases have any significantly different meaning? Does “best endeavours” merit more effort to fulfil the requirement than using “reasonable endeavours”?

On a sliding scale “best endeavours” is considered to impose a more onerous requirement than “reasonable endeavours”. An obligation to use “best endeavours” is likely to require the obliged party to do all that can reasonably be done in the circumstances and will

generally require the subordination of the commercial interests of that party to the putting into effect of the obligation though not to the extent that could lead to financial ruin. By contrast, “reasonable endeavours” has been interpreted by Courts as imposing a less onerous obligation. Such a clause allows the obliged party to give appropriate consideration to its own commercial interests when taking into account the likelihood of achieving the desired result.

Ideally, contracts which include such a commitment should clarify what actions are actually required to satisfy any such obligation,

including:-

- the specific activities the party is required to undertake to meet the obligation;
- the specific activities that do not need to be undertaken;
- whether a party is required to spend money to satisfy the obligation, and, if so, how much;
- the time period within which the party has to fulfil the obligation

For advice on all aspects of commercial contracts please contact Mark Robinson at Hodge Halsall on 01704 531991 (markrobinson@hhlegal.co.uk).



New EU cookie law

A cookie is a piece of text stored on a users computer by their web browser. It is generated by the website that the user visits and will store information that might record how long the user spends on each page on a site, what links the user clicks and preferences for page lay out and colour schemes. They are also used to store data on what is in a user’s “shopping cart”.

New e-privacy Regulations which come into effect on 25th May 2011 amend the Privacy and Electronic Communications

Directive requiring businesses to obtain the permission of visitors to their website to store and retrieve usage information from computers of those visitors. The Information Commissioner has warned UK businesses to “..wake up..” and take action to prepare for the new law. Action against businesses for breach of the regulations is unlikely in the short term but businesses must begin to consider how to meet the requirements of the new legislation. The Commissioner observed that “while the rollout of this new law will be a challenge

it will have positive benefits as it will give people more choice and control over what information businesses and other organisations can store on and access from consumers’ own computers”.

The main purpose of the new regulations seems to be to control “behavioural” tracking which is used to target adverts to a visitor based on what they have viewed and how they have interacted with websites.

Accrual of holidays during sickness absence

The Working Time Regulations 1998 implemented the European Working Time Directive into UK Law. Statutory entitlement to holiday under the Working Time Regulations continues to accrue during sickness absence. Employers must allow workers to take annual leave during a period of sickness absence, should they elect to do so. Employees are entitled to choose to be paid for annual leave whilst off sick, which can be an attractive option if their sick pay has expired. Alternatively, an employee can wait until a return to work and then take annual leave. An employer has no such choice and cannot force an employee to use or delay their annual leave in such circumstances.

A worker who elects not to take annual leave whilst off sick must

be allowed to take accrued holiday entitlement upon a return to work provided it is taken in the same leave year. The law is, however, unclear as to whether holiday can be carried over in such circumstances when an employee is off sick from one leave year to the next. The Working Time Regulations prohibit annual leave being carried forward but a decision of the European Court allowed leave to be taken at a mutually convenient time for worker and employer even if it meant that the holiday entitlement was carried over into the following leave year. Because this is contrary to the Working Time Regulations the decision currently applies only to workers employed in the public sector but it is arguable that a worker in the private sector who is denied the right to carry



forward annual leave in such circumstances could bring a claim against the UK Government for a failure to properly implement the Working Time Directive in UK law.

For advice on all employment law matters please contact
Judith Bond
(judithbond@hhlegal.co.uk) at
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on 01704 531991.



Help disrupt fraudsters by reporting scam emails

A news release recently issued by the National Fraud Authority (NFA) advises that Action Fraud has set up a dedicated email address to which scam emails received can be forwarded. These will then be sent on to the National Fraud Intelligence Bureau for collation and analysis with a view to preventative action being taken. The purpose of the scheme is to disrupt fraudsters and close down links between

them and possible victims.

Advice given by the NFA about what to do if receiving a scam email includes :-

- do not click on any links in the scam email
- do not reply to the email or contact the sender in any way
- if you have clicked on a link in the email, do not supply any information on the website

that may open

- do not open any attachments that arrive with the email
- visit the action fraud website to forward on the scam email

The NFA released its Annual Fraud Indicator in January 2011, placing the cost of fraud against the individual at £4 billion. The figure apparently is mainly made up of mass marketing fraud, including romance fraud.



What does it take to make a contract?

In our Autumn 2010 newsletter, we considered whether a contract could be formed by email. Another recent Court of Appeal decision has emphasized how important it is for businesses to understand the legal process of how a contract is made. In business negotiations the phrase "subject to contract" is used to indicate that the party involved does not wish to be bound to any formal agreement at that stage. Whilst negotiations are taking place businesses need to emphasize if any agreement on the main points under discussion is considered to be a non-binding pre-agreement rather than a binding but conditional agreement. It is a question of fact at what point, if ever, parties have the necessary intention to enter into a formal contract. When negotiations are not marked "subject to contract" yet

all necessary terms have been agreed, a binding contract may well have come into existence even though the parties may not have considered that to have been the case and had anticipated a later formal written contract.

In the case considered by the Court it was decided that an email exchange including the phrase "a formal contract will follow" was not subject to contract and a contract had come into existence. The email exchanged identified the parties, the product involved, the start date and length of the agreement and price. The Court held that two factors indicated a clear intention to make a contract :-

- the negotiations were not expressly made subject to contract

- all substantial terms of the contract had been agreed.

In these circumstances, the reference to "a formal contract will follow" did not prevent a contract having already been made.

The case illustrates how important it can be to mark all correspondence and communications "subject to contract" to prevent the creation of a contract before it is actually wanted.

Immingham Storage Company Ltd v Clear plc [2011]

For advice relating to commercial contracts please contact Mark Robinson at Hodge Halsall on 01704 531991 (markrobinson@hhlegal.co.uk).

Increase in tribunal awards

From 1st February 2011, the annual increase in potential compensation awards by Employment Tribunals came into effect;

- Basic Award and Statutory Redundancy Payment – the

maximum amount has risen from £11,400 to £12,000.

- A "week's pay" for statutory purposes has increased to £400
- Compensatory Award – the maximum amount has now

increased from £65,300 to £68,400.

- The maximum award, therefore, for an unfair dismissal claim is now £80,400.

We use the word 'Partner' to refer to a member of the LLP. Hodge Halsall LLP registered Office: 18 Houghton Street, Southport, Merseyside PR9 0PA Tel: 01704 531991. Also at: 565 Liverpool Road, Ainsdale, Southport PR8 3LU Tel: 01704 577171. Partners: Mark P Robinson, Judith Bond & Gordon Hatton. Hodge Halsall LLP is a Limited Liability Partnership registered by the Solicitors Regulation Authority. registered No. OC328351

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