

Social networking: a help or hindrance?

Social networking sites such as Facebook, MySpace and Bebo are increasingly popular but can create a number of employment issues.

Use of profiles as 'references'

Should an employer look at an applicant's online profile before deciding whether to offer them a position? Whilst there is nothing preventing an employer from looking at publicly available material before taking this decision, it is widely considered to be contrary to good practice. Equal opportunities monitoring has been developed to remove certain information from job application forms, such as an applicant's ethnic background, sexual orientation, religion, political and religious views and age, helping to protect the employer from accusations of discrimination. If an employer does not have this information, it cannot be accused of having its decision influenced. Checking applicants' profiles that may contain such information could leave the employer exposed to such accusations.

However, it is estimated that approximately 25% of employers do undertake such checks to ensure the appointed applicants are the most suitable. If you do decide to check such information, make sure you check all applicants and not just some, and be consistent in the extent of the information reviewed e.g. by using one person to sift through the details and providing the relevant information only to the person(s) who will be making the decision. However, if some profiles are private, this may not be possible. You should disregard any information obtained in this way that could be related to any form of discrimination.

Access to social networking websites at work

If your employees have access to the internet at work you should ensure a detailed computer policy is put in place, which includes if and when employees can access social networking sites, what behaviour is not acceptable and when disciplinary action could result. It is often easier to have a zero tolerance policy. If you are going to monitor usage, ensure this is also clearly laid out.

Libellous statements

A more serious concern is what employees publish about their employer on social networking sites, even in the employee's own time. Defamatory comments made on such sites could amount to libel and enable action to be taken by the employer. Disciplinary or dismissal action could result if an employee publishes something that brings the employer into disrepute, damages its reputation, breaches confidentiality obligations or could destroy the relationship of trust and confidence between employer and employee. This could include the employer seeing photos published of an employee engaged in anti-social behaviour or derogatory comments being made against the employer. However, the employer is only within its rights to take action if the published material is in some way damaging, rather than if it simply dislikes what has been written.

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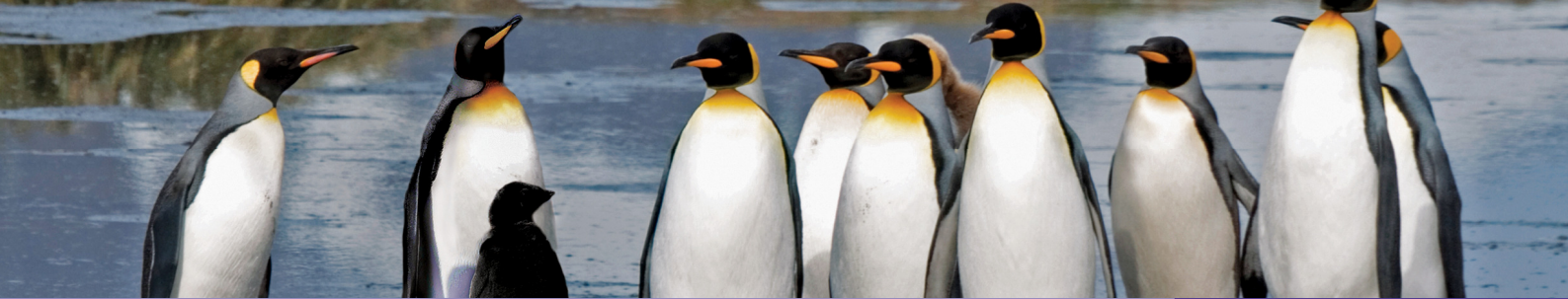
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Action points

- Ensure only relevant (and non discriminatory) information is considered if pre-employment checks are conducted
- Put in place a clear computer/internet usage policy including any monitoring
- Make employees aware of their obligations in respect of confidentiality, fidelity and trust and confidence (an express contractual clause should be considered)
- Set out what behaviour could result in disciplinary/dismissal action

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