

SOCIAL MEDIA AND EMPLOYMENT LAW

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Introduction

Social media has transformed the way we communicate and connect with one another, but it has also created new issues for both companies and employees. As the usage of social media in the workplace continues to grow, employment law has had to adjust to keep up. In this essay, we will look at the influence of social media on employment law and address some of the most important concerns that employers and employees should be aware of. Social media has become an integral part of our daily lives, and it has also impacted the way we work. The use of social media in the workplace has created new challenges for employers and employees in the context of labour law.

Social Media and Recruitment

Social media has become an increasingly important tool for recruiters, who use platforms like LinkedIn to source candidates and screen potential employees. However, there are some potential pitfalls to using social media in the recruitment process. For example, using social media to gather information about a candidate's race, religion, or sexual orientation could be seen as discriminatory and may violate The IT act, 2000 which protects the information of an organisation as well as an individual, be it an employee, and prescribes punishment for the offences with a hefty fine.

Employers should also be aware that candidates may have a right to privacy in their social media profiles, and that accessing this information without their consent could be a

breach of data protection regulations. As defined under Section 2(s) of the Industrial Disputes (ID) Act, a workman is a person who performs any manual, unskilled, skilled, technical, operational, clerical, or supervisory work. The definition excludes the following individuals:

1. Those who work primarily in a managerial or administrative capacity
2. Those who work in a supervisory capacity and earn more than INR 10,000 (USD 140) per month.
3. Those who perform primarily managerial functions.

Social Media and Employment Monitoring

Employers may also use social media to monitor employees, such as ensuring that they are not revealing private information or participating in improper online behaviour. However, employers can only monitor their employees' social media use to a certain extent.

Employers, for example, must weigh their legitimate interest in monitoring employees against the employees' right to privacy. Employee monitoring without their knowledge or agreement may be considered a violation of their private rights, as well as a violation of data protection legislation.

Employers must also verify that any monitoring is proportional and required, and that it does not violate workers' right to free expression. For example, employees have the right to express their opinions and beliefs online, and employers should not discipline employees for expressing opinions that are protected under freedom of speech laws. The government has recently introduced certain rules ('Rules') under the IT Act which, read along with section 43A, set out the compliances which need to be observed by an entity which collects or stores or otherwise deals with SPDI (such as passwords, financial information, health conditions, sexual orientation, medical records and biometric records).

Social Media and Workplace Harassment

Social media has also introduced new challenges in relation to workplace harassment. Employees may use social media to make comments or post content that is discriminatory, harassing, or offensive to their colleagues. Employers have a duty to protect employees from such behaviour, and may be held liable for harassment that occurs on social media platforms.

Employers should have clear policies in place regarding online conduct and should ensure that employees are aware of the consequences of engaging in inappropriate behaviour online. Employers should also take swift action to address any complaints of online harassment or bullying and should have a clear process for investigating and addressing such complaints.

▪ *Social Media Policies*

Employers need to have clear policies in place regarding the use of social media in the workplace. These policies should outline what is and is not acceptable behavior on social media platforms, both inside and outside the workplace. Employers may prohibit employees from making negative comments about the company or other employees on social media or from posting confidential information. Such policies should be consistent with applicable labour laws, such as those related to free speech and collective bargaining rights.

▪ *Employee Privacy*

Employees have a right to privacy in their social media profiles, and employers must be careful not to infringe on this right. Employers may not require employees to provide access to their personal social media accounts, nor may they use information from these accounts to make employment decisions, without violating labour laws that protect employee privacy.

The Information Technology Act, 2000 ('IT Act') is the only legislation which has attempted to address the issue of data protection and privacy. Section 43A provides for the protection of sensitive personal data or information ('SPDI') and section 72A protects personal information from unlawful disclosure in breach of contract.

- *Discrimination and Harassment*

Social media has increased the potential for discrimination and harassment in the workplace. Employees may engage in discriminatory or harassing conduct online, either towards other employees or customers. Employers have a duty to provide a workplace free from discrimination and harassment, and this includes online conduct. Employers must be vigilant in monitoring social media activity and taking appropriate action when necessary to prevent such conduct.

- *Whistleblowing*

Employees may use social media to disclose information about their employer that they believe is illegal, unethical or in violation of company policy. Such disclosures, if protected under whistle-blower laws, may be protected from retaliation. Employers must be careful not to take adverse action against employees who make protected disclosures.

- *What if no SPDI is being collected?*

The specific requirements under the IT Act as stated above are only triggered where SPDI is collected. However, employers need to be careful where any kind of sensitive information is being collected. For example, even if the specific requirements under the IT Act are not triggered, it is possible that the employer may face liability under common law.

- *Impact on multinational companies*

Several multinational companies process their employee data at

a single location in the world and the data is made accessible to subsidiaries located across the world. Hence, when putting their data protection systems in place, they need to take into account data protection laws of all the relevant countries. The provisions of Indian laws as discussed above may pose some unique situations and requirements which have to be adhered to.

Conclusion

Social media has had a substantial influence on employment law, providing new issues and possibilities for both employers and employees. Both parties must be aware of the potential risks and benefits of using social media in the workplace, as well as ensure compliance with relevant regulations and policies. While the Rules are new in India, the issues relating to employee data protection and privacy will be thrust to the forefront in the coming years. It is essential for employers to understand the nuances of these issues and be prepared to be compliant with the regulations as well as to protect the interests of the company. The Indian Government is proposing a comprehensive legislation on the 'Right to Privacy' ('Privacy Bill'). A working draft of the proposed Privacy Bill includes a provision whereby an employer does not need to obtain written consent of an employee where employee information is being collected for the purpose of and in connection with employment. SPDI should only be collected where there is a need to collect such information. For example, a company which is involved in disposing of hazardous wastes may need to collect very detailed medical records of its employees to be used in case of mishaps.

Employers should have clear procedures in place addressing the use of social media in recruiting and employee monitoring, and any monitoring should be reasonable and essential. Employers should also take efforts to handle any accusations of online harassment or bullying, and have a clear mechanism in place for investigating and dealing with such complaints.

Employees should be aware of their rights to privacy and free speech, and they should make certain that any content they share online is suitable and does not violate the rights of others. Employers and workers can handle the issues of social media in the workplace by working together to ensure that everyone can use these platforms safely and ethically.

In the framework of labour law, social networking has produced new issues for both employers and employees. Employers must establish clear standards addressing the usage of social media in the workplace while simultaneously respecting employees' privacy rights. Employers must take steps to avoid online discrimination, harassment, and retribution while simultaneously protecting employees' rights to engage in protected concerted activity. Employers and employees may ensure that social media is utilised in a way that is compatible with labour regulations and supports a safe and healthy workplace by navigating these obstacles responsibly.