**Social media and the Law – Useful Cases**

**Misconduct**

***1. Gill v SAS Ground Services UK Ltd****:*

The employer discovered through G’s Facebook profile that she had taken part in an event at London Fashion Week while she was on sick leave. An employment tribunal found her dismissal for gross misconduct to be fair.

***2. Young v Argos Ltd:***

The tribunal found the employee’s social medical postings to be relatively harmless and not capable of amounting to gross misconduct after she had ‘liked’ a comment posted by a colleague on Facebook about Y’s manager being “as much use as a chocolate teapot”. The ET found that no reasonable employer could have concluded that Y’s posting amounted to gross misconduct.

***3. Teggart v TeleTech UK Ltd****;*

A customer service representative posted on his Facebook page: *“quick question who in Teletech has A* [a colleague] *not tried to fuck? She does get around!”*. The employer took the view that the comments amounted to harassment and dismissed T for gross misconduct, which was found by the tribunal to be fair.

***4. Dixon v GB Eye Ltd****:*

D, while suspended, posted a number of abusive comments on Facebook, describing herself as working for *“the biggest bunch of wankers known to the human race!”.*

In the event, the tribunal found that D was fairly dismissed for breach of the IT policy, but added that her offensive and abusive Facebook postings were sufficiently serious to entitle a reasonable employer to dismiss on that ground alone.

***5. Walters v Asda Stores Ltd****:*

Asda drew up a detailed social media policy after noticing that employees were discussing work issues on online sites.

W posted a comment on her Facebook page saying that although she was supposed to love her customers, hitting them with a pickaxe would make her far happier. Asda decided that the action amounted to gross misconduct and dismissed W.

The tribunal found the dismissal to be unfair in light of the fact that the detailed social media policy categorised such a comment as misconduct, rather than gross misconduct. However, the Tribunal reduced W’s compensation by 50%.

***6. Whitham v Club 24 Ltd t/a Ventura:***

W posted on her Facebook page; *“I think I work in a nursery and I do not mean working with plants”*.

The employer dismissed W on the grounds that the comments had put its reputation at risk and could have been detrimental to its relationship with a client/customer.

The tribunal found the dismissal to be unfair in that the employer had failed to conduct a reasonable investigation; it never investigated whether the relationship with the client/customer had actually been jeopardised.

***7. Preece v JD Wetherspoons Plc;***

P was subjected to verbal abuse and physical threats whilst at work. While still on duty, P accessed her Facebook page and posted:- *“I hate fucking people”*, and (about one of the perpetrators of the abuse), *“fucking hag!!! Hope her hip breaks”*.

P was summarily dismissed for making inappropriate and abusive comments about customers and work in breach of the internet policy. The employer was also satisfied that her conduct had lowered its reputation and resulted in a fundamental breakdown of trust and confidence.

The dismissal was found to be fair.

**Confidential information**

***8. Zaver v Dorchester Hotel Ltd:-***

Z’s terms and conditions of employment stressed the duty of confidentiality he owed to the hotel and its guests and visitors, and stated that breach of confidentiality would be viewed as gross misconduct.

Z began keeping a blog in which he recorded various management mistakes and communication failures. The blog mentioned the names of some of his colleagues and the name of the hotel once.

Z was called to a disciplinary hearing and summarily dismissed for breach of confidentiality.

An employment tribunal rejected his claim for unfair dismissal, accepting that he had no malicious intent in creating the blog, and genuinely believed that he was trying to help his employer improve methods of communication and operational standards. However, it was also clear that Z fully understood the public nature of the blog and that there was a risk that it could be accessed by a member of the public. The tribunal concluded that the hotel’s decision to dismiss, after a full and fair procedure, was within the range of reasonable responses: the confidentiality obligation was of paramount importance.

**Reputational damage**

***9. Taylor v Somerfield Stores Ltd****:*

T posted a 20 second clip on YouTube which showing a person dressed in store uniform being struck on the head with a plastic bag. It was filmed in the store’s warehouse.

T subsequently apologised for his actions and removed it from the site. It was on YouTube for 3 days and was viewed only eight times – at least three of which had been by management.

T was summarily dismissed for gross misconduct for ‘bringing the company into disrepute’.

The tribunal found the dismissal unfair as there was no evidence that the company’s reputation had actually been damaged. Moreover, the dismissal officer had not enquired about the number of ‘hits’ the clip got on YouTube – something the tribunal regarded particularly relevant in assessing the level of potential reputational risk to the company. The tribunal found that the company should have had regard to T’s unblemished six years’ service, his apology, and the possibility of imposing a less severe sanction.

Compensation was, however, reduced by 30%.

***10. Crisp v Apple Retail (UK) Ltd****;*

Apple went to great lengths to inform staff of the importance of maintaining the brand’s reputation and had strict policies about online conduct. The consequences of breach were also clearly spelled out. C then made derogatory comments about Apple and its products online.

Although the tribunal acknowledged that dismissal might appear harsh, it rejected his unfair dismissal claim. Given the importance of protecting its image - which was made clear in policies and training - Apple was entitled to view C’s comments as gross misconduct and he was, or should have been, aware that his actions would be taken very seriously. It is worth adding that C did himself no favours by not offering an apology and by failing to cooperate during the disciplinary process.

***11. Game v Laws***

This case was reported today. It is the first EAT decision confirming unfair dismissal over Twitter. The offending ‘tweets’ were made on L’s personal Twitter account, were sent in L’s personal time and although they were not about the employer (rather dentists, caravan drivers, golfers, Newcastle United fans, the police and disabled people), the employer found them to be sufficiently offensive to warrant dismissal for gross misconduct. The EAT agreed.