

# Social Networking, Employment Rights & Trade Union Activity

### Introduction

Facebook, Bebo, Twitter, and now Google+. The possibilities for social networking are growing all the time and UNISON members and activists have made great use of the increasing opportunities to reach out to each other and the wider public.

The purpose of this briefing is to look at the legal rights and responsibilities that may affect members using social media from the perspective of employment law and trade union rights.

The European Convention on Human Rights protects individuals against illegitimate State interference with their private life, their freedom of expression or their freedom of assembly. It also imposes a duty on the State to secure enjoyment of those rights without discrimination. It does not, however, give individuals blanket immunity against other people, including their employers, who may take issue with what is said, how things are said, or where they are said. Firstly, an activity is not necessarily private just because it takes place outside working hours. Secondly, expressing a view publicly may contravene a duty under a contract without that duty being an unjustified interference with a Convention right.

### The Employment Contract

Employers and employees have mutual duties to respect each other's confidence and to act faithfully towards each other as part of their contractual agreement. If either the employer or the employee commits a serious breach of these duties, the other may treat that act as destroying the employment relationship.

Employees posting about their employers on social networking sites, are essentially making public comments. If those comments are likely to embarrass the employer, they may be in breach of the terms and conditions of employment. This could then lead to disciplinary action being taken against the employee. If an employee makes comments about their employer which are harmful and untrue,

#### KEY POINTS:

- **The right to assemble extends to joining a social media network aimed at trade union members.**
- **Exercising the right to free speech can be a breach of confidence or a breach of contract**
- **The employment relationship extends beyond the working day**
- **But, it is unlawful for employers to punish trade union members for taking part in trade union activities in their own time.**



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the employer may consider this to be an act of gross misconduct justifying summary dismissal.

In considering whether such disciplinary actions or dismissals are fair, it is the nature of the comments that must be considered, rather than the fact that they are made on a social media site.

A blanket ban on making any comments about an employer on such sites would be an unjustified interference with the right to freedom of expression guaranteed by the Convention.

### Trade Union Activities

Under the Trade Union & Labour Relations (Consolidation) Act 1992, trade union members are protected against action by their employer aimed at preventing or deterring them from taking part in trade union activities or from being penalised from doing so. The one qualification to the right is that the trade union activity must take place 'at an appropriate time.' Time outside working hours will always be an appropriate time, and time at work that is agreed with the employer will also be appropriate.

As trade union activists and branches make more use of social media, members are being encouraged to participate in online trade union activity. Provided they take part at an appropriate time, it is unlawful for an employer to penalise them.

In any trade union dispute with an employer, there may be times when matters become heated and every point of disagreement is hotly debated. At such times activists and officers should consider whether a social networking site is the appropriate place to debate the issues or whether more formal channels should be used. The law protects trade union activities. It is easier to identify such activities if they take place within the trade union's own structures, rather than individual action on a personal site that is not readily seen as linked to the trade union activity involved.

Activists and officers should also remember that the union may be held liable for any unlawful acts, such as defamation, committed in its name. While honest opinion and fair comment are essential to democratic debate, malicious or slanderous statements present significant financial risk to the union as a whole.

### **Action for Branches**

- Follow the UNISON guidance on website content and use of the branch email system.
- Ensure the content of any online material is agreed by the appropriate branch officers.
- Draft a communication strategy to deal with social media activity.
- Agree with the employer when members can access online trade union activity during work time.



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