

Breakfast for Business

Best Practices for Employers: Social Media and the Workplace

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Presenters:

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Agenda

- The focus of today's seminar is to provide insights and strategies for employers in addressing the intersection of social media and the workplace
- The areas to be covered by the seminar are:
 - 1) Introduction to Social Media
 - 2) Workplace Policies on Social Media
 - 3) Workplace Harassment and Social Media
 - 4) Employee dismissals resulting from Social Media Postings
 - 5) Non-Solicitation Agreements and Social Media

1) Introduction to Social Media

- Social media is an app or website that allows online communities to share information, ideas, personal messages, photos, videos, and other content
- Social media generally allows for direct messaging from one person to another person and group messaging, which is broadcast to all followers/friends or to everyone in the community
- Social media also often allows messages to be more effectively shared through the use of hashtags (e.g. #learning), which are searchable and ranked

1) Introduction to Social Media

- Social media can be used for professional purposes (e.g. to market new customers and to search for new career options), for consumer purposes (e.g. to review a local restaurant), and for personal purposes (e.g. to update friends about family matters or to find a romantic interest)

1) Introduction to Social Media

- The main social media accounts used by businesses and individuals are:
 - LinkedIn – a professional social networking site that allows individual and business bios and the sharing of information via its newsfeed
 - Twitter – a post based social media site that allows individuals and businesses to share via 140 character tweets
 - Facebook – a social networking site that allows individual and business pages and the sharing of information via each page’s timeline
 - Instagram – a photo and video based social media that allows individuals and business to share pictures and videos, along with a description
 - Snapchat - a photo and video based social media that allows individuals to share pictures, videos, and stories (they may be filtered or doodled), which are self-destructing

1) Social Media: LinkedIn

The screenshot shows a LinkedIn profile for Ida Husøy. The header includes the LinkedIn logo, account type (Basic | Upgrade), and navigation links (Home, Profile, Contacts, Groups, Jobs, Inbox, Companies, News, More). The profile name is Ida Husøy, with a photo and a 100% profile completeness indicator. Her current role is Photo Editor at JMU Journalism in Liverpool, Merseyside, United Kingdom. Her education includes a Bachelor's degree in International Journalism at Liverpool John Moores University. The profile shows 66 connections and a search bar. The summary section states: "I am very organized, engaged and structured in my work. I am independent, but a good team player. Punctuality and trustworthiness is aspects I do take very seriously. I have high aspirations and expectations for myself, and I would go to some extraordinary lengths to make sure I am accomplishing my work in a satisfying manner." The experience section lists "Photo Editor" at JMU Journalism (October 2012 - Present) and "Journalist" at Drammens Tidende. The right sidebar features ads for "Calling all journalists!", "Business Master Degree", and "MBA Leadership 18 Months". Below these are "Who's Viewed Your Profile?" statistics (9 views in 30 days, 23 shows in 90 days) and "Ida's Activity" showing a recent connection to Thomas Christensen.

LinkedIn Account Type: Basic | Upgrade

Home Profile Contacts Groups Jobs Inbox Companies News More

Ida Husøy Add Connections

People Search... Advanced

Ida Husøy
Photo Editor at JMU Journalism
Liverpool, Merseyside, United Kingdom | Media Production

Current: JMU Journalism, Drammens Tidende
Previous: Tønsbergs Blad, Strømsgodset IF
Education: Bachelor's degree, International Journalism at Liverpool John Moores University

Improve your profile Edit 66 connections

uk.linkedin.com/in/idahusoy Contact Info

Summary

I am very organized, engaged and structured in my work. I am independent, but a good team player. Punctuality and trustworthiness is aspects I do take very seriously. I have high aspirations and expectations for myself, and I would go to some extraordinary lengths to make sure I am accomplishing my work in a satisfying manner.

Experience

Photo Editor
JMU Journalism
October 2012 – Present (3 months) | Liverpool, United Kingdom

Journalist
Drammens Tidende
Privately Held, 51-200 employees; Newspapers Industry

100% profile completeness

Calling all journalists!
New site offers way to customize how you receive story ideas

Business Master Degree
1 year Master.No1-International Experience by FT.Campus rotation in 7 cities

MBA Leadership 18 Months
Top Online MBA in Leadership & Sustainability in 18 Months free catalogue!

Ads by LinkedIn Members

Who's Viewed Your Profile?

9 Your profile has been viewed by 9 people in the past 30 days.

23 You have shown up in search results 23 times in the past 90 days.

Ida's Activity

Ida Husøy is now connected to Thomas Christensen, Key Account Manager at Sony
9 minutes ago

1) Social Media: Twitter



The image shows a screenshot of the Twitter profile page for David Cameron (@David_Cameron). The profile is verified and includes a bio: "Official profile of David Cameron, Leader of the Conservative Party & Prime Minister of the United Kingdom. Account run by David Cameron and @conservatives team". It also shows 3 tweets, 8 following, and 75,831 followers. The main content area displays three tweets from David Cameron, including one about appearing on @MarrShow and another about a £140m donation to the John Radcliffe Hospital.

Home Connect Discover Me Search

David Cameron ✓
@David_Cameron
Official profile of David Cameron, Leader of the Conservative Party & Prime Minister of the United Kingdom. Account run by David Cameron and @conservatives team
UK · <http://www.conservatives.com/>

Follow

3 TWEETS
8 FOLLOWING
75,831 FOLLOWERS

Tweet to David Cameron
@David_Cameron

Tweets

Following

Followers

Favorites

Lists

Recent images

Similar to David Cameron

Tweets All / No replies

David Cameron @David_Cameron 4h
About to appear on @MarrShow: I'll be explaining how we're on the side of people who want to get on in life. pic.twitter.com/kDF1xD4f
[View photo](#)

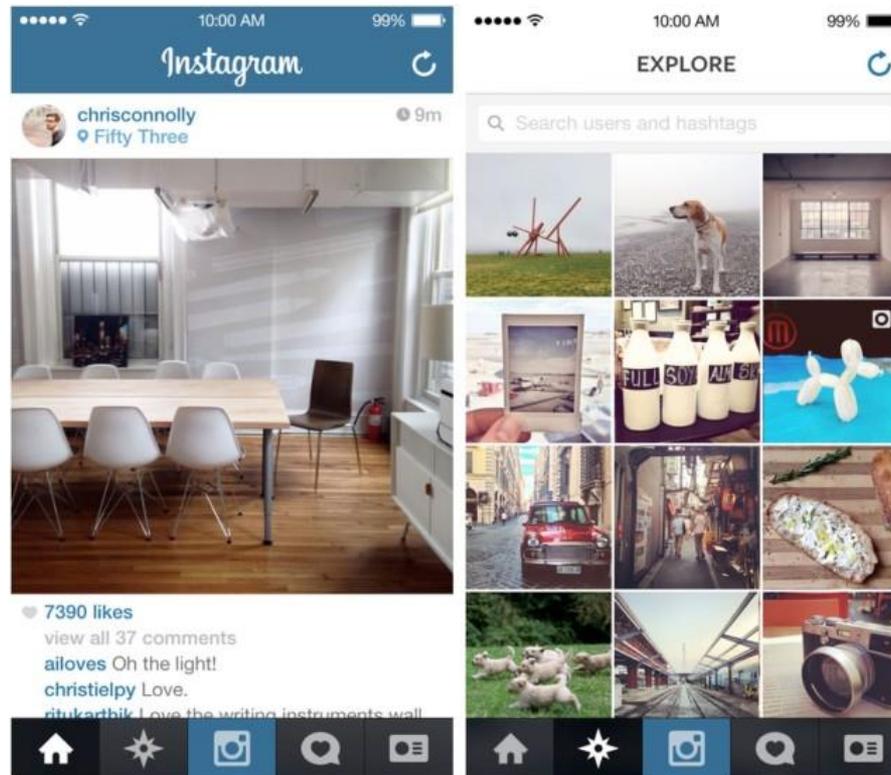
David Cameron @David_Cameron 18h
Today I met the nursing team at the John Radcliffe Hospital, and announced £140m to help their work across the country pic.twitter.com/Ztw8c99N
[View photo](#)

David Cameron @David_Cameron 19h
I'm starting Conference with this new Twitter feed about my role as Conservative Leader. I promise there won't be "too many tweets..."
Expand

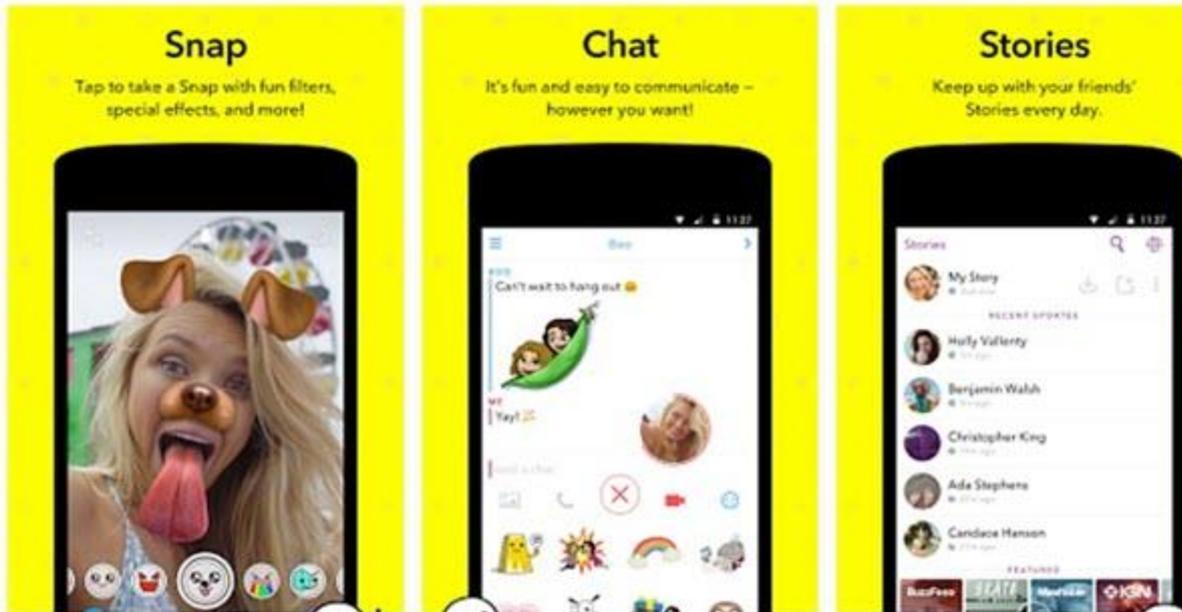
1) Social Media: Facebook

The screenshot shows a Facebook profile for 'Anders Toxboe'. The top navigation bar includes the search bar, the user's name 'Anders', and the 'Home' button. The left sidebar lists navigation options: 'Anders Toxboe' (Edit Profile), 'FAVOURITES' (News Feed, Adverts Manager, Messages, Events, Saved), 'PAGES' (UI-Patterns.com, toxboe.net, Cloudbreak, Pages feed, Like Pages, Create Page, Create Advert), and 'GROUPS' (Cloudbreak, Harsdorffsvej 7, 7A...). The main content area features a status update form with the text 'What's on your mind?' and a 'Public' privacy setting. Below this is a decorative banner with the text 'Good evening Anders! Thanks for being here – enjoy Facebook tonight.' and the Facebook logo. A notification from 'Vivien Lewkowicz de Neergaard' is visible, stating 'liked this.' Below that, a post from 'Casper Radmer' is shown, sharing a video from 'ScienceDump's video' 5 hours ago. The right sidebar contains 'PEOPLE YOU MAY KNOW' (Michael Verdier, Georgia Wempe) and 'SUGGESTED PAGES' (Lulu's blog).

1) Social Media: Instagram



1) Social Media: Snapchat



2) Social Media Policy

- Due to the impact that social media can have, it is important that social media be addressed in every company's IT policy
- In particular, the IT policy should at minimum address:
 - i. access to and the use of the company's social media accounts
 - ii. the importance of differentiating between personal social media accounts and professional/business social media accounts
 - iii. the use of social media during working hours
 - iv. that any failure to comply with the policy can result in discipline up to and including the termination of employment on a with just cause basis
 - v. that damaging conduct via social media can result in discipline up to and including the termination of employment on a with just cause basis

2) Social Media Policy

- For newly hired employees compliance with the company's IT policy can be a term of their employment agreement
- For current employees without an employment agreement, they can be asked to sign the new IT policy
- Given the speed at which social media is developing and changing, it is also important that the IT policy explicitly provides that the company has reserved the right to revise the policy at any time and without any notice

3) Workplace Harassment and Social Media

- In general, workplace harassment is engaging in a course of vexatious comments or conduct that is known or ought to be known as unwelcome and is likely to undermine a person's dignity
- Some types of behaviours that may be workplace harassment include:
 - bullying
 - teasing
 - intimidating or offensive jokes or innuendos
 - discrimination
 - displaying or circulating offensive pictures or materials
 - offensive or intimidating phone calls

3) Workplace Harassment and Social Media

- Workplace harassment also includes sexual harassment in employment
- Some examples of sexual harassment are:
 - pursuing a romantic relationship with a subordinate
 - pursuing a romantic relationship with someone who has previously rejected advances
 - demanding physical contact and making unnecessary physical contact
 - making sex-related comments about a person's physical characteristics or actions
 - saying or doing something because you think a person does not conform to sex-role stereotypes
 - posting or sharing pornography, sexual pictures or cartoons, sexually explicit material
 - bragging about sexual prowess

3) Workplace Harassment and Social Media

- Employers, supervisors, and workers all have obligations relating to preventing, not engaging in, and responding to workplace harassment
- In general, these obligations come from the Occupational Health and Safety Act (the “OHSA”) and the Human Rights Code (the “Code”)
- All acts of workplace harassment are covered by the OHSA, including harassment by a non-worker (e.g. the harassment of a worker by a supplier) and harassment that occurs during working hours offsite (e.g. at a client’s premises)
- In contrast with the OHSA, the Code only covers workplace harassment which is discriminatory
- In other words, the harassment must be in regard to one of the prohibited grounds in order to be covered by the Code (e.g. age, sex, race, religion, etc.)

3) Workplace Harassment and Social Media

- Social media can result in workplace harassment by workers and against workers
- It is all too common for a workplace harassment investigation to uncover a history of harassment by one co-worker against another co-worker via social media
- Snapchat, given its ability to delete a message upon viewing, is often used in instances of sexual harassment
- It is important that companies prohibit harassment via social media and that they be prepared to address harassment via social media

3) Workplace Harassment and Social Media

- In regard to company run social media accounts, it is important that the company takes steps to ensure that workers do not use it to harass individuals and that the public does not use it to harass workers
- In a recent decision, an arbitrator held that the TTC had failed to meet its workplace harassment obligations in regard to its Twitter account @TTChehelps
- The TTC had set up the account in order to allow customers to voice their complaints and concerns
- In turn, many customers complained about TTC employees and harassed TTC employees
- These customers were then provided with a telephone number and website in order to lodge a formal complaint

3) Workplace Harassment and Social Media

- The TTC did not seek to have the offensive tweets deleted or to block the twitter account
- On occasion, @TTChelp furthered or supported the harassment
- For example, when one customer tweeted that their driver was “too sexy [for them] to handle in the morning” @TTChelp tweeted back “thanks for the feedback, glad to hear! LOL”

3) Workplace Harassment and Social Media

- The arbitrator held that the TTC had failed to satisfy its obligations and required that the Union and the TTC work together to establish a proper policy
- The arbitrator stated that a proper policy would require that the TTC take certain steps in regard to harassing tweets, such as warning the user, seeking to delete the tweet, and blocking the user
- The take away for companies is that, if they have a social media account that allows customer complaints, they then need to have a policy in place to address harassment
- Companies also must be prudent to ensure that whomever is in charge of the social media account properly responds to any harassment and does not support or engage in harassment

4) Employee Dismissals and Social Media

- When terminating an employee, the first decision to be made by the employer is whether the employment is being terminated on a with just cause or without cause basis
- Just cause exists when the employee has engaged in serious misconduct that is incompatible with the fundamental terms of the employment relationship
- Depending on the circumstances, just cause may be established based on one incident (e.g. an employee committing a theft) or it may only be established after the employee has gone through a process of progressive discipline
- When an employee is dismissed on a with just cause basis, then the employee is not entitled to any notice or pay in lieu of notice at common law
- The employee may still have entitlements pursuant to the *Employment Standards Act*

4) Employee Dismissals and Social Media

- While dismissing for cause is generally economically advantageous, employers should ensure they only allege cause when they have satisfied themselves as to the existence of cause
- If the Court concludes that cause was alleged without support, additional damages may be awarded

4) Employee Dismissals and Social Media

- Conduct in regard to social media can result in an employer having just cause to dismiss an employee
- For example,
 - the employee may engage in workplace harassment
 - the employee may post content which reveals they have lied about the need for a sick day or a leave of absence
 - the employee may post content which reveals that they are setting up a competing business
 - the employee may post content that harms the company's reputation

4) Employee Dismissals and Social Media

- As an example, a few years ago a unionized company dismissed two employees and suspended another employee in regard to Facebook posts
- The Union grieved the dismissals and suspension
- The Arbitrator upheld one of the dismissals and the suspension, but reduced the other dismissal to a one year suspension without pay
- The employee whose dismissal was upheld had made derogatory comments about his manager and the company for 16 months and openly mocked the company's request to stop
- In contrast, the employee whose suspension was upheld had made only a handful of comments, deleted them when requested, and apologized

4) Employee Dismissals and Social Media

- As another example, a few years ago a TTC employee was dismissed after his Facebook account revealed he had been lying about being ill
- The employee had called in sick for three consecutive days
- However, the employee's Facebook page showed that he was in Las Vegas at his bachelor party
- The employee was dismissed and the Union grieved the dismissal
- At the arbitration, the TTC was able to produce over 80 pictures that had been posted to the employee's Facebook account documenting his bachelor party
- The TTC also introduced posts by the employee's brother, which included: "“Vegas tonight! Can't wait! Brother's bachelor party is gonna be fun! OMG can't wait! Countdown starts! Another 3 hours to go! Yay!! Yet another place to visit! Life can't get better! Loving it.”"
- The arbitrator held that there was a pattern of willful deceit and upheld the dismissal

4) Employee Dismissals and Social Media

- When disciplinary worthy conduct has occurred in regard to social media, it is important that the employer properly investigates the matter before dismissing the employee
- Most of the time the investigation process will involve all of the following steps:
 - 1) sending the employee home and temporarily suspending the employee with pay for the duration of the investigation
 - 2) speaking with and taking written statements from all possible witnesses and securing all possible evidence (e.g. tweets, Facebook postings, etc.)
 - 3) informing the employee of the accusations and giving them a chance to respond
- At the conclusion of its investigation, the company will then need to determine whether just cause exists

5) Non-Solicitations and Social Media

- Companies often wish to limit a worker's ability to work elsewhere during the relationship and after the relationship comes to an end
- To do this, companies normally rely on restrictive covenants (e.g. non-competitions and non-solicitations) and confidentiality agreements
- A non-competition covenant precludes current and former employees as well as current and former contractors from working for or providing services to a competitor
- A non-solicitation covenant precludes current employees and contractors as well as former employees and contractors from contacting the company's clients in order to offer to work for them or provide services directly or indirectly to them

5) Non-Solicitations and Social Media

- As a non-solicitation covenant is not as restrictive as a non-competition covenant, Courts are more inclined to enforce it
- However, in order for the non-solicitation provision to be helpful, companies may find it desirable to address social media
- For example, the non-solicitation provision may provide that the employee is precluded from “following” clients or “requesting to connect” with clients for a period of 12 months following the cessation of employment

QUESTIONS?

Wilson Vukelich LLP can help ensure that your employment law matters are handled effectively and efficiently, and in a manner that is reflective of new legal developments and obligations. If you have any questions or require further information, please contact:

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