

Social networks: Not the place to slam your boss!



In recent years the social networking phenomenon has exploded, which has resulted in almost everyone sharing personal experiences, photographs and opinions on Facebook, Twitter and other social networks.

But what should an employer do when an employee defames his superior or the employer in the virtual space? Can such behavior have legal consequences even when the employee defames the employer outside working hours? How can the employer defend itself against the employee in such cases?

In assessing an employee's behavior on social networks, the employer must distinguish between two basic situations: the employee defames the employer directly during working hours and discloses opinions using the company's computers or cell phone or the employee does so outside working hours using a private computer or cell phone. If the employee discloses negative information about the employer from a private computer during his free time, it is the employee's private matter. The right to privacy is a basic constitutional principle and this right cannot be taken away. An employer that discovers the contents of an employee's private correspondence may not penalize the employee within the employment relationship because this would be a violation of the right to privacy.

While the employee may not be penalized under the labor law at the employee-employer level, the employers may defend themselves by applying civil, commercial or even criminal tools. In such a case, the employee would be treated as a natural person and the employer would be treated as a legal person or the employee's superior could be treated as a

natural person. The content of the private correspondence of a natural person can then be used in legal proceedings.

Under the Civil Code, defamation of a superior constitutes violation of the protection of individual personal rights. If an employee defames the firm in which he works, it constitutes impairment of the company's reputation under the Commercial Code. Both cases may also be regarded as a criminal offence of defamation. If the employee also discloses sensitive information acquired at work, this may constitute a criminal offence of unauthorized handling of personal data or infringement of the rights of another under certain circumstances. It may also relate to the protection of a business secret or even unfair competition.

However, it is a different situation when the employee discloses negative information about the employer during working hours or uses the company's computer to do so. Under certain circumstances the employer may monitor use of the Internet by employees for private purposes if special characteristics of the employer's activities deem it necessary. In such cases, the employer must inform employees of the scope, form and method of monitoring. If these conditions are fulfilled, the employer may assess the information with regard to employment. Whether or not the employee is informed about monitoring, the employer may always monitor how much working time the employee

spends reading various web pages or sending private e-mails. If it constitutes an extensive amount of time, the employee may be penalized for violation of working discipline for failing to use work time effectively and abusing a computer or cell phone provided by the employer.

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Under certain circumstances, defamation of the employer can also be considered a violation of employee obligations, hence a violation of working discipline under the labor law. In particular cases the employer must find a way to obtain defaming information published by the employee on social networks and the number of people who have access to that information or to how many recipients the information was sent. However, shared information is not necessarily available to "friends" only. As one of the most visited social networks, Facebook allows users to pre-set consent for each user to the fact that their status, photographs or comments will be accessible to anyone, even over the entire Internet. Although these settings can be changed, the user's name, profile picture

and sex will always be accessible. If a user does not change the account settings, all information is considered public information from the legal point of view.

Courts in the USA, Germany and France have recently begun dealing with legal issues arising from use of social networks. The first "Facebook firing case," involving an administrative law judge's decision, is a case of five employees terminated for their comments on Facebook after a co-worker had raised concerns about the job performance of other employees. The judge decided that employees have a protected right to discuss matters affecting their employment amongst themselves.

Probably the most discussed "Facebook firing case," which was to set the limits for making statements to the detriment of an employer, was the American case of Ms. Dawnmarie Souza, whose employment was terminated after she made negative comments about her superior on Facebook. The case ended in an out-of-court settlement, so Americans will have to wait for another decision in a social networking firing case.

Slovak legislation does not explicitly deal with most situations occurring in an "alternate reality." Despite the lack of court decisions, employees should use social networks reasonably and responsibly and refrain from making employment-related comments in order to avoid litigation.



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