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SOCIAL MEDIA

Workplace issues in Germany and in the UK

HENGELER MUELLER

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Introduction

Social media broadly encompasses online applications which allow the creation and exchange of material for social interaction. The most common examples are Facebook, Twitter and LinkedIn (and also XING, SchülerVZ and StudiVZ in Germany, the latter two being networks targeted specifically at students and graduates).

The use of social media in both the UK and Germany has increased exponentially in recent years. It has become more and more popular as a tool for communication and the dissemination and gathering of information. Social media has begun to enter the workplace, in most cases inadvertently, and in fewer cases by design. This has given rise to numerous issues, which are not limited to employees using social media for personal purposes during working time. Some estimates report that issues surrounding misuse of the internet and social media in the workplace cost Britain's economy billions of pounds every year. On the other hand, a study by Danish scientists indicates that limited use of social media during a workday may increase employee productivity. Many employers are now developing policies to deal with the issues created by social media in the workplace, but these policies, as well as the law itself, are playing catch-up with the constant development of new technology.

Social media has implications in every stage of the employment relationship. This briefing examines each of those stages in turn, noting relevant differences in law and practice between the UK and Germany. One of the main differences is that there seems to be substantially more (published) case law on employment-related social media issues in the UK than in Germany where more general precedents on internet use, data protection, derogatory commenting etc. must be used instead to develop ideas about how to treat the relevant issues.

Recruitment

Advertising vacancies

Social media may be used to advertise job vacancies. The practice is not yet widely established in either the UK or Germany, but becomes more popular as a relatively inexpensive way for employers to access many potential candidates. LinkedIn and XING, in particular, can be used explicitly for recruiting.

One risk of advertising via social media is that it may lead to discrimination claims, for instance on grounds that the employer chooses to advertise to a particular network

or a particular 'group' therein, whose members are predominantly of one sex, race, etc. More fundamentally, it could constitute age discrimination - in the UK under the Equality Act 2010, in Germany under the General Act of Equal Treatment (*Allgemeines Gleichbehandlungsgesetz - AGG*) - through targeted advertising at young people, as surveys reveal that the use of social media in general is far more prevalent amongst younger people. In the UK, the Advisory, Conciliation and Arbitration Service (ACAS) recommends that employers use at least two different recruitment channels, to reduce the risk of discrimination. In Germany that has not been made an issue so far. This may be because discrimination challenges generally are still less prominent in Germany. Another explanation could be that according to a 2010-survey 81% of the polled German employers concomitantly used the internet and newspapers as recruitment channels.

Vetting candidates

Currently, a more prevalent issue is the use of social media to vet candidates. In the UK, a 2011 ACAS survey found that 45% of employers check applicants' social networking sites before making a decision as to hiring. In Germany, a 2009 survey put that figure at around 33%.

In the UK, there is no legislation to prevent employers from accessing and using information which is publically available via social media. The current consensus is that it is acceptable to check a candidate's online presence, provided that the information is used in a non-discriminatory way, and with the acceptance that it is unverified information and should be weighted accordingly.

There are however a number of issues to consider. **Privacy issues** arise: arguably, as a point of good industrial relations practice, employees should not be subject to scrutiny in respect of what they do in their own time, even if the information is in the public domain. **Discrimination** is relevant as the employer may gain knowledge on key characteristics to many discrimination claims in the UK (age, sexual orientation, ethnicity, etc.) which it would not usually obtain from a candidate's CV, or even on interview. With respect to **data protection**, the Information Commissioner's Office (ICO) has informally confirmed that it regards trawling social media as a form of vetting to which its Employment Practices Code[1] will apply. The Code requires that employers only vet (i) as last resort where particular and significant risks to employer, clients or customers are involved; (ii) after timely information of the candidate and at a late stage of recruitment; (iii) to obtain specific information, not for general information gathering; and finally (iv) not rely on information from potentially unreliable sources, and allow

1 http://www.ico.gov.uk/for_organisations/data_protection/topic_guides/~/media/documents/library/Data_Protection/Detailed_specialist_guides/the_employment_practices_code.ashx

For your convenience, we have installed the following shortcut link to the code: http://bit.ly/ydhRge

the applicant to make representations in relation to information which could affect the decision to hire. Besides the above, many employees' representative groups (such as the Trade Unions Congress (TUC)) argue that online vetting is **bad practice** since unless it can be done for all candidates, it will mean that the employer has more information on some candidates than on others.

On the other hand, the weight of these arguments will be quite different if candidates include a link to their social media network presence in their application, which according to a 2010 UK survey 13% of candidates did. In these circumstances an employer will have far more freedom to use and rely on the information gathered from social media.

In Germany, the prominent issue raised in the vetting context is data protection. Data protection is governed by the Federal Data Protection Act (*Bundesdatenschutzgesetz - BDSG*). Thereunder, the obtaining and use of personal data generally requires either statutory permission or consent of the affected person, which can only be given after the person has been informed about the purpose and potential consequences of the use of such data.

The key criterion for the decision whether or not data may be obtained by the employer is its public accessibility. Personal data **publicly available through search engines** or otherwise may generally be used for an employer's own commercial purposes. There will also be deemed consent or statutory permission for the use of data generally accessible through internet search engines. If **data is only accessible by members of a social network**, it is necessary to differentiate according to the purpose of the social network. The general conditions of use of privately-oriented social networks will usually prohibit the use of information on the network for commercial or business purposes. Consequently vetting is not permissible. On professionally-oriented networks that will not be the case. As the purpose of presence on these networks is to establish a platform for information of potential professional contacts, consent in the gathering of information therefrom could be deemed given. In light of such networks' purpose and depending on its number of members, such information might even be considered in the public domain. Such data may be obtained and used by an employer to the extent required for a decision whether or not to hire. Even then, however, information not strictly relevant to hiring may not be obtained. This applies in particular to sensitive information, *i.e.* information on political or sexual orientation or union membership, etc. of a candidate. **Information accessible to "friends" only** generally may not be gathered. However, on professionally-oriented social networks, there will be deemed consent within the meaning of BDSG to the new employer obtaining such information

if the candidate makes the new employer a "contact" or "friend". Finally, **information obtained from profiles of third parties** may not be used by an employer, both pursuant to the general terms of most social networks, and under the BDSG.

The described rules may be up for further change. A draft bill on the pre-employment gathering of employee data was introduced in the German parliament in 2010. With regard to social networks, it provides that information posted on social networks not aimed at the display of its users' professional qualification may not be obtained by an employer. Also, employers are required to inform job applicants if they plan to gather and/or save any such information. It is currently unclear if and when that law may be passed.

On the procedural side, employers planning to research personal data of candidates via the internet are required by BDSG to inform their data protection officer. Finally, sec. 99 para. 1 no. 1 German Works Constitution Act (*Betriebsverfassungsgesetz - BetrVG*) requires companies regularly having more than 20 employees and a works council to make data regarding the professional and personal qualification of job applicants available to the works council. However, there is no legal precedent yet stating whether that encompasses data obtained from social media.

During employment

Prohibiting use in the workplace

When social media first became popular, the reaction of more cautious employers was to ban its use in the workplace, and to block access to social media sites via the company's servers. Since then, many employers have changed their policies, and employers have had to accept that banning use of, and blocking access to, social media is not practical. A UK survey in November 2011 also revealed that nearly 50% of the under-24s would not work for a company in which social media is banned.

In Germany, employers may prohibit the private use of social media at work either by unilateral instruction or by shop agreement concluded with its works council. Once banned, social media use constitutes a violation of the employee's contractual duties, and, depending on its intensity and content, may justify dismissal for misconduct or even for cause (*aus wichtigem Grund*). However, precedent on private internet-use at work indicates that it is difficult to justify a dismissal by occasional prohibited use of social media at work. For example, in a 2010 case, to justify dismissal, an employer was required to demonstrate that the private internet use had led to a substantial impairment (*erhebliche Beeinträchtigung*) of the employee's performance.

Allowing use in the workplace

Many **UK** employers now accept that some limited use of social media in the workplace is acceptable. However, employers who allow the use of social media should not simply look to regulate access to social media sites on office computers. The key is to regulate the link an employee makes between social media and their employment (*e.g.* through mentioning their employer on social media communications, or joining 'groups' with some link to the employer). Whether social media are accessed at work or from home, links to the employer via social media can still be formed.

A social media policy should also take into account that the use of social media may have health and safety implications, for example if its use infringes the generally recommended 10 minute break away from a visual display unit (VDU), such as a computer, for every hour worked.

In Germany, unless private use of social media at work has been explicitly banned, employees may assume that limited use (*i.e.* for a matter of minutes) is acceptable. If the employer finds an employee's use to exceed that limit, he in principle has to issue a warning letter (*Abmahnung*) making the employee aware thereof, and after repeated breach may be able to declare notice of termination for misconduct. Only if the use is excessive, involves accessing unethical websites or publishing prohibited material, a warning letter may be dispensable and, in extreme cases, it may justify dismissal for cause. Requirements for excessive use are rather high: It was affirmed in the case of an employee writing several hours worth of emails every day over a time-period of seven weeks, some days effectively leaving no time for work. On the other hand, the dismissal of a secretary of a company without explicit private internet use policy who had written several hours worth of private emails during two months' working time was declared void.

Regulating employees' use of social media outside the workplace is more difficult in Germany than in the UK. As a rule, an employer may only regulate an employee's conduct at the workplace, whereas conduct during free time generally cannot be limited, prohibited or sanctioned by the employer. However, this is different if such conduct impacts on the employment relationship. Legal writers will commonly advise that a policy on social media use should include provisions whether employees may identify themselves as employee of the employer in social media, whether comments on the employer may be made and whether business contact data may be entered in a private social network account (*e.g.* on XING).

Encouraging use in the workplace

In some limited circumstances, employers may want to encourage the use of social media in the workplace. This may be in order to promote networking by building up contacts on sites such as LinkedIn, XING, in order to illustrate their working environment to potential employees, to publicise the employer's services or provide commentary on recent developments in a sector through a medium such as Twitter.

If employers are encouraging the use of social media in the workplace, they should think carefully about their approach to certain relationships. For instance, should managers be encouraged to become a 'contact' or 'friend' of their subordinates? There could be a risk of favouritism if such links are established with some subordinates but not others. Further, should employees be discouraged from becoming a 'contact' or 'friend' of any clients, customers or suppliers, in case the line between professional and private conduct becomes too blurred?

Dismissal

There are a number of ways in which conduct involving social media may provide grounds for dismissal. The key to many of them will be whether the employer has a clear social media policy in place. A number of examples which have emerged and been tested through recent case law, in the UK and Germany, are discussed below.

Employee making derogatory comments about the employer

In the UK, this has proved to be one of the most common forms of misconduct involving social media. A 2010 survey revealed that one third of employees admitted to talking negatively about their employer and/or workplace on social media sites.

Derogatory comments are liable to breach the employee's duties to the employer either under express duties in the employment contract or under implied duties of fidelity, trust and confidence on an employee. In a recent UK case an employment tribunal found the dismissal of an employee who had complained on Facebook about his job to be fair, as the employer's social media policy banned critical remarks about its brand. The tribunal also made it clear that these comments were not truly private, as they could have been forwarded very easily with the employee having no control over this process. However, the degree to which the employer's policy is publicised is key. In another case, an employee was found to be unfairly dismissed for posting inappropriate comments on a website linked to his employer, because he had not been given any indication that such conduct could result in disciplinary procedures.

In Germany, derogatory comments may constitute a breach of the contractual duties to protect the employer's reputation and to refrain from acts that may be detrimental to the employer. This will depend on whether the employee's right to freedom of speech outweighs the employer's interests in protecting its reputation. The factors which will be considered in determining this issue include: the intensity, context and factual background of the statement; the position of the employee; the effect of the statement (taking into account its public nature, its dissemination to an unlimited number of readers in a short time period, and the indefinite memory of the internet); and the reason for the statement made by the employee. If a breach can be established, an employer would usually be justified in issuing a warning letter or potentially even dismissing the employee for misconduct. However, derogatory comments against the employer or colleagues are generally considered permissible if made in a confidential setting, *e.g.* in private conversation with individual colleagues. These will even remain unsanctioned if the other party later makes the content public against the will of the author. Applied to social media, that may likely mean that comments of which the author may rightfully assume that they are only accessible by a small and clearly limited group of other users, may go unsanctioned; whereas they may be sanctioned if the author may not rely on confidentiality.

Employee making derogatory comments about a client/customer

In the UK this has been another of the most common examples of social media misconduct. Some recent examples include dismissal of an employee for making comments about a customer on Facebook including expletives and a hope that she would break her hip. The dismissal was upheld as fair, as the comments were in the public domain, made during the employee's shift and the employer had a clear policy providing for disciplinary action where Facebook comments harmed its reputation or any of its customers. In another case, a member of airline staff was dismissed for making comments insulting customers and calling aircraft safety into question on a Facebook group in breach of the employer's policies. On the other hand, the dismissal of an employee who had (incorrectly) identified herself on Facebook as an employee of one of her employer's key clients and posted derogatory comments on her work was found to be unfair. The court found that there was no evidence of any harm to the relationship with the client.

The latter would be similar to the situation **in Germany**: While no case law exists on derogatory comments made on social media, courts have previously held that negative comments on customers made in a confidential setting will not justify dismissal unless the employee's attitude has negative impact on his or her conduct at work or productivity. Other than that, principles of treatment of negative comments on customers will likely be similar to those of comments on the employer.

Other conduct causing reputational damage to employer

In Germany, a much-discussed issue (seemingly not yet decided by German labour courts) is the posting of private photos of employees, the content of which may affect the employer's reputation. Depending on the purpose of the company, the position of the employee and the content of the photos, it may justify a warning letter or in severe cases even a dismissal. For example, photos of a head of recruitment visiting a brothel or similar establishment are likely to be held to affect the employer's reputation given the prominent and responsible position of the employee – whereas the same photo picturing a company warehouse worker might be held to not affect the company's reputation at all.

In the UK there have been a number of other examples of conduct involving social media which may harm the employer's reputation (and therefore justify dismissal). One involved an employee who was disciplined for sending an email, from his home computer and outside working hours, to a colleague which contained racist and sexist material, and was headed "*It is your duty to pass this on*". The tribunal upheld the decision to discipline the employee for gross misconduct, for carrying out an act which might damage the employer's reputation with one of its biggest clients, and for breaching the equal opportunities policy. It also held that the employee's Article 8 right to privacy was not infringed as, despite the time and place of sending, the email was not intended to be private. Another case, in which employees posted a video hitting one another in work uniform and using plastic bags of their employer (where the logos were not clearly identifiable) seems to suggest that minor or hypothetical damage to the employer's relationship with a client is not enough to justify dismissal. There may also be other actions which constitute misconduct because of some characteristic that is specific to the employer itself. For instance, there could be sensitivity about employees in some sectors identifying particular political affiliations. This highlights the way that social media starts to blur private and professional conduct.

One important point to note in the UK context is that, if an employee makes comments which are libellous and/or defamatory, the employer may be vicariously liable if the employee is acting in the course of employment. The employee will not necessarily be acting outside the course of employment simply because the employee has been expressly forbidden to publish defamatory material, particularly if using social media is permitted in some form, or is even part of an employee's role. If an employee clearly identifies his job and employer on social media, it will be unlikely to absolve the employer of liability if the employee uses a disclaimer to the effect that all views are his own.

Bullying of other employees

Where employees are connected via social media, it can provide another medium for bullying to take place. **In the UK**, the legal principles underlying bullying via social media are similar to those underlying bullying by other means, so in most respects an employer's existing anti-bullying policy will be effective to tackle so-called "cyber-bullying". Employers may want to consider including cyber-bullying which takes place outside as well as inside the workplace within their policies, as this may still be "in the course of employment". If it is, an employer may be liable not just for bullying of his employees by other employees, but also for harassment by third parties, if (in the latter case) the employer is aware of at least two previous instances of harassment and has not taken reasonable steps to prevent the harassment occurring.

German employers have the general fiduciary duty to protect their employees from harassment by superiors, peer employees and third parties to the extent that they can take influence thereon; in severe cases of harassment or as means of last resort that can justify a dismissal of the harasser.

There may also be issues (**in the UK and in Germany**) with posting private photos of colleagues on social networking sites. Depending on the nature of the photos and on the privacy settings used, this sort of action can constitute bullying. This is particularly true (and may also constitute discrimination or harassment) if the photos reveal sensitive private information about an employee, for example his sexual orientation. It could also damage the employer's reputation. This may justify warning letters and, for repeat offences, even dismissal.

Disclosure of confidential information

Social media provides another potential medium for employees to disclose confidential information. Generally speaking, as for bullying, the legal principles are similar in the social media context as any other disclosure of confidential information.

Recent examples **in the UK** involving social media have either involved (i) employees disclosing the employer's confidential information or (ii) employees revealing information which is restrained from disclosure. For instance, the dismissal of an employee who had started a Facebook page to invite comments about the employer's workplace reorganisation was found to be unfair, as he had taken the page down once he realised that this was a breach of his confidentiality obligations and the employer's social networking policy, and made a full apology.

In Germany, the disclosure of confidential information on social media sites may justify a warning letter, in severe case even dismissal for violation of contractual duties, depending on the content of the disclosure. Basically, the same principles are applicable as to disclosure of confidential information through other media.

Employees on sick leave

There have been a number of examples in both Germany and the UK of employees calling in sick, and then posting content on social media sites which makes it clear that they are not in fact unfit for work.

In the UK, upon discovery, employers will usually be justified in taking disciplinary action against that employee. If the employer suspects that an employee may have called in sick on a false basis, he can check that employee's activity on social media sites, to the extent that access to those sites is either publically available or has been granted to the employer by being a 'contact' or 'friend', or ask other employees who have access to the information to disclose it. For example, in one case the dismissal of an employee was found to be fair when she was signed off sick from work following a minor operation and had told her employer she was too unwell to return to work, but publicised on Facebook her involvement in an event at London Fashion Week which involved auditioning models and choreographing a fashion show.

In Germany, use of social media sites during sick leave may constitute fraudulent conduct which may justify dismissal for misconduct or on grounds of suspicion (*Verdachtskündigung*), provided that the use of social media is incompatible with the employee's sickness, constitutes conduct countervailing recovery and/ or the content of the posting makes it seem unlikely that the employee is, in fact, sick. For example in 2011 a trainee had posted a note reading "Off to the doctor and then pack" before leaving for Mallorca. The dismissal protection proceedings ended by amicable settlement after the court indicated that it would uphold the dismissal for cause.

Loss of productivity

In the UK, ACAS has produced guidance on how to manage productivity in the context of social media use. In one case, dismissal of employees for their levels of internet usage was found unfair because the employer's rules about when employees could access the internet at work were unclear. The relevant policy permitted access outside "core working times".

In German precedents on excessive internet use, courts commonly take into account whether an alleged excessive use affected the productivity of the employee in order to determine whether it constituted a harsh violation of the employee's duty to work justifying dismissal.

Whistleblowing

One area which has yet to be tested **in the UK** courts is the issue of whistleblowing on social media. It has been partially considered in a US case which involved an employee who was fired for Facebook comments which were critical of her supervisor. She won her case against dismissal on the grounds that the employer's policy prohibiting employees from making negative remarks on the internet about the company or its employees was too broad, as employees had a right to discuss employment conditions on social media. Similar issues may arise in the UK, as whistleblowing legislation renders void any confidentiality provision which purports to preclude an employee from blowing the whistle on an employer's wrongdoing. Employers should therefore ensure that their social media policies are drafted to include a reference to whistleblowing, and ideally direct employees to the separate whistleblowing policy.

In Germany, whistleblowing may be sanctioned, *e.g.* if the pressing of charges is frivolous, has dishonest motives or was done anonymously (and therefore could not profit from the right to freedom of speech). Further, thereto, precedent by the Federal Labour Court has established that in light of the contractual duties to protect the employer's reputation and to refrain from acts that may be detrimental to the employer, in principle, employees are required, as a first step, to flag issues internally that may have such negative effect. If the internal flagging does not lead to relief, the employee may be justified in making the issue public.

Post-termination

Even after the employment relationship has terminated, social media may still have an important role to play. This is primarily due to the potential for former employees to exert competitive behaviour with the aid of social media sites. While there seemingly is no German precedent and there are fewer UK cases in this context than in the dismissal context, it is widely recognised as a potential danger area. This is because the public display of a person's activities and connections is a crucial component of most social networking sites. A number of features of LinkedIn, XING and Facebook make them particularly relevant and useful in this regard. These include: (i) employees may form their own connection (LinkedIn), contact (XING) or become friends (Facebook) with

clients; (ii) the site will suggest "people you may know" based on existing connections; (iii) employees can join special interest groups and gain access to other members of that group, who *e.g.* work in a similar sector, and form connections, contacts or make friends with them; (iv) employees can import email contacts, or upload a contacts file; (v) access to the network continues post-termination of employment; and (vi) if a member updates his job details, it automatically notifies all his connections, contacts or friends of the change.

Do social media contacts constitute confidential information of the employer?

Firstly, whether or not social media contacts are confidential will depend on the employee's privacy settings. These may be "open", whereby the contacts can be viewed by all the employee's other contacts. In these circumstances, the contacts are in principle not confidential, and cannot be protected as confidential information (unless the employee only has a small number of contacts). On the other hand, the settings may be "closed", whereby the contacts can only be viewed by the employee (or those he chooses to share them with). In these circumstances, the contacts may well be confidential.

The next question is: who owns them? **In Germany**, seemingly no case law exists on the issue. A duty to hand contacts over to the employer may be derived from employment contract clauses requiring the employee to hand over any employment-related material at termination. **In the UK**, it was decided in one case that all contacts of an employee who had merged personal and previous professional contacts with existing work contacts on his employer's e-mail programme, were then the property of the employer, and could not be copied or removed for use by the employee after termination of his employment. In another case, the employer successfully claimed that customer business cards collected by the employee before he joined but added to the employers' pre-existing contacts amounted to confidential information of the employer. These principles could well be applied equally to social media sites. There may also be intellectual property rights in the database of contacts which is created by the employee on a social media site. The ownership of the intellectual property would generally vest in the employer if it is created by the employee in the course of employment.

Use of social media to compete with the ex-employer, and restrictive covenants

As social media can give ex-employees access to clients, customers, suppliers and employees of the former employer, it gives ex-employees an opportunity to exploit those contacts for the benefit of other competitive activity. Can the ex-employer do anything to prevent that?

In the UK, the starting point is that covenants which restrain an employee's activities post-termination will only be enforced if they go no further than is reasonably necessary in order to protect a legitimate business interest of the former employer. **In Germany**, a prohibition to contact customers of the former employer for a limited period of two years as a maximum (client protection clause – *Kundenschutzklausel*) is in principle permissible if the employer undertakes to pay a compensation equal to at least 50% of the last total compensation of the employee for each month of restriction. The content of the prohibition will depend on the underlying agreement between employer and employee.

The key question in a social media context is likely to be: what is "solicitation" and what is the meaning of contacting of clients? As mentioned above, changing your profile in LinkedIn, XING and Facebook sends an automatic notification to all contacts. Without more (*i.e.* an invitation for clients to contact you) this is unlikely to amount to solicitation or contacting of clients. In a UK context, that may also depend on the proportion of contacts who are clients, as this will govern whether the approach was 'targeted'. Under UK law, these sort of social media notifications will almost certainly amount to "dealing", which can also be restrained (albeit to a lesser extent) by restrictive covenants.

Discovering/proving competitive activity

Social media sites can provide evidence of competitive activity. **In a UK case** the ex-employer of a management consultant who left to set up his own competing company successfully obtained pre-action disclosure of all the employee's LinkedIn contacts, emails from the ex-employer's network to the employee's LinkedIn account, and documents evidencing use made and business obtained from contacts uploaded to LinkedIn while he was employed by the ex-employer. The ex-employee had tried to delete the incriminating evidence from his LinkedIn account, but it was recovered from the server of LinkedIn's US operator.

Conclusion

The issues surrounding the use of social media in the workplace are, as this briefing demonstrates, pervasive. They are also set to become more and more commonplace.

The most important action that employers can take to deal with these issues is to develop a clear policy on the use of social media. Employers may consider having an overall policy for the whole organisation, with some flexibility for a different approach to certain job types, where social media is likely to be most used and/or could be most damaging. In Germany, policy clauses may be subject to co-determination of the works council, in particular pursuant to sec. 87 para. 1 no. 1 German Works Constitution Act.

As a guide, a social media policy should contain at least the following:

- restrictions and/or prohibitions on employees making references associating themselves with the employer or its clients/customers on social media (including the use of the employee's work email address to access such sites);
- a prohibition on postings on social media containing any illegal, defamatory or confidential information, or otherwise breaching any of the company's policies;
- guidance on what privacy settings should be used (and an indication that, even if privacy settings are used, postings may still be considered to be public);
- if social media is to be used for business purposes, guidance on what disclaimers or other steps an employee must take when making private postings; and what duties arise in the event that the employment ends, as well as
- a warning that breach of the policy could result in disciplinary action.

It may be advisable for employees to be consulted on the implementation of the policy, to help ensure maximum awareness and acceptance. If this is not feasible, the policy should be widely communicated, easily available, and covered in employee training (including induction training).

Finally, here are a few additional practical tips for managing social media issues in the workplace:

- Unless there is a clear reason not to, employers should treat online conduct as they would treat offline conduct.
- Simply blocking access in the workplace or ignoring the issue will not make it go away; employers need to address the use of social media insofar as it might impact on the workplace.
- Keep your policy under review; the law is only beginning to develop in this area, and policies may need to be adapted as new legal principles emerge.

Further information

If you would like to find out more about any of the issues raised in this briefing, or require advice in relation to a specific matter, please contact:

HENGELER MUELLER

Dr Hans-Joachim Liebers (Partner, Frankfurt)
Email: joachim.liebers@hengeler.com
Tel: +49 69 17095 154

Dr Christian Hoefs (Partner, Frankfurt)
Email: christian.hoefs@hengeler.com
Tel: +49 69 17095 643

SLAUGHTER AND MAY

Roland Doughty (Partner, London)
Email: roland.doughty@slaughterandmay.com
Tel: + 44 207 090 5422

Charles Cameron (Partner, London)
Email: charles.cameron@slaughterandmay.com
Tel: + 44 207 090 5086