

Checklist: online and e-mail risks

This checklist highlights the risks that your business and employees should be aware of when using the internet or sending e-mails and gives some practical suggestions about how to minimise those risks.

A new landscape

The use of media sites such as Facebook, Twitter and Bebo have changed forever the way people meet and communicate socially and the same revolution is happening in the workplace and business environment as electronic communications change the way companies engage with clients and customers.

By and large, increasing the pool of people with whom a company can do business, and making communication easier can only be a good thing, however there are traps for the unwary. The rate with which this area is changing means that often policies on conduct and communication fail to address situations which now commonly arise in practice.

Attitudes are also changing toward privacy, confidentiality and what is acceptable to say about colleagues, customers and competitors. Employers who have not given sufficient thought to such matters will face uncertainty when problems come to light and may find themselves resolving such problems in the Employment Tribunals or courts.

The general rule remains simple: don't say anything in any medium or in any forum which you would not feel comfortable saying directly to the person concerned. However, in practice staff often wrongly think they can safely make unsuitable remarks in private even in a public forum.

Reputational risk

Information that is written on the internet or in e-mails can seriously damage your business's reputation and the reputation of individual employees. Your employees could lose their job, be sued or face criminal charges and your business could be sued or fined.

Stop and think before you click

- Writing something on the internet or in an e-mail is exactly the same as writing on paper and, because of the lack of control over who might ultimately see it, sometimes worse. Your business cannot control what the recipient does with an e-mail.
- Inappropriate information that is written online or in an e-mail can have severe financial repercussions for your business. It can also create serious personal and disciplinary issues for individual employees.
- Even if your employees are e-mailing or using social media in their own time, they could still get themselves and your business into serious trouble.

E-mails and internet postings can be used in legal proceedings

- E-mails and internet postings can be used against your business in legal proceedings or other regulatory investigations and you may have a legal obligation to disclose them to the other party, even if it is not aware of them.
- Your business should never delete e-mails relating to:
 - a legal dispute;
 - an investigation; or
 - a potential dispute or investigation.

It is very difficult to delete e-mails and online postings

Simply deleting e-mails or internet postings will not necessarily solve the problem. Forensic IT equipment can still find supposedly "deleted" messages.

Do not be hurtful or spread rumours

- Online content or e-mails that could be thought of as obscene, racist, sexist, bullying or hurtful should never be posted or sent. Your business can be held liable for discriminatory acts committed by your employees.
- If a comment that amounts to harassment is made about another employee online or in an e-mail, your business could be liable even if the employee used their own equipment when making the comment.
- Exaggerating or making false or inaccurate statements about another company or person online or in an e-mail could lead to your business being sued, even if the e-mail was only sent to one person.

Take care with confidential information

- Where possible, avoid sending confidential information by e-mail. Your business should take legal advice on how the information can be best protected.
- Any e-mail containing confidential information should be clearly marked as "confidential".
- If your business receives an e-mail that contains "dangerous" material (for example, another company's trade secrets), you should take legal advice immediately.

Do not make a contract by mistake

- A legally binding contract can be made by a simple exchange of e-mails.
- Your business should make it clear if it does not intend to be bound by what is communicated in an e-mail.

Do not copy someone else's work

- Other people's work should not be used in e-mails or online posts unless:
 - your business has permission from the original author; or
 - you know that it is not protected by copyright.

Do not send or view offensive or unknown material

- Encourage your employees to carefully monitor what arrives in their inbox, especially if they do not recognise the sender or the title of the e-mail seems peculiar.
- If there is a risk that an e-mail may contain a virus, it should not be opened and your IT department should be contacted immediately.
- Make your employees aware that they could be disciplined or even dismissed for forwarding inappropriate e-mails or accessing inappropriate websites at work. In severe cases it could also be a criminal offence.

Avoid unproductive usage

- Most businesses allow light personal internet and e-mail usage as long as it does not interfere with their employees' duties. However, you should make sure your employees are aware that excessive, unproductive use of the internet and e-mails at work may be treated as gross misconduct for which they could be dismissed.
- E-mails can often waste time. Encourage employees to think carefully before copying someone in on an e-mail, especially if there is a long chain of e-mails attached.

Checklist

Do your contracts allow you to monitor your employees' use of internet, telephone and email?

Yes

No

Does your business have a policy about use of social media?

Yes

No

Does your disciplinary policy deal with misuse of social media?

Yes

No

More information

We have produced a case study (which can be found on <http://www.goldenleaver.co.uk/newsletters.htm>) on the use of social media. We are happy to discuss the drawing up of a social media policy which meets your particular businesses needs, and if you would like to do so please contact Caroline Leaver on 020 3159 5172 or c.leaver@goldenleaver.co.uk.