

Telling tales

Are blogs good or bad? asks Kate Hilpern.

in my opinion...

Like it or not, blogging is huge. Almost 30 million web logs – defined as online journals – currently exist, according to blogging website www.tehnorati.com, and about 70,000 more appear each day.

Some people are attracted to the notion that blogs represent power. In the past, if you wanted to say something to a global audience, you depended on the media. Now you can simply relay your own unspun, unfiltered messages on your blog. Others like the fact that blogs are interactive. Indeed, many receive huge numbers of online responses, creating a kind of forum.

Because bloggers generally discuss various aspects of their daily lives, a good proportion of them mention their workplace – the very reason why many employers are getting increasingly edgy about their staff blogging. Some are concerned about blogs revealing confidential information about the organisation, according to Ben Wilmott, employee relations adviser for the Chartered Institute of Personnel and Development, while others worry about bloggers saying inappropriate things about their co-workers or even negative things about the workplace.

“Employee bloggers sometimes shoot from the hip, especially because of the informal nature of blogging,” Wilmott explains. “You could even get employees making racist or sexist comments about their workplace in their blog.”

Search engine impact

The reality is that most blogs aren’t widely read. But it only takes one negative reference to an organisation to appear on a search listing and within hours, it could appear higher up the Google ratings than the company’s official website. Google tends to promote blogs higher up its search ranks than static web pages.

The first thing for employers to remember, says Jonathan I’Anson, an associate at Brabners Chaffe Street, is that “blogs are universally accessible and, as such, a blog may create bad publicity, bring an employer into disrepute or even place an employer in the legal firing line”.

Indeed, an employer may well be liable for the act of an employee carried out in the course of their employment, even if it is done without the employer’s knowledge or approval, he says. “So if a blog is written in work time or on an employer’s computer, then the employer could well be exposed to claims of defamation, discrimination or harassment, particularly if a blog is used to make inappropriate comments about others.”

I’Anson adds that if an employee is spending time blogging when they should be working, then they are not carrying out the job they were hired to do and are therefore potentially guilty of misconduct. “Employers can then take action,” he says.

Where blogs include confidential information relating to the employer, they may well constitute a breach of the implied duty of mutual trust and confidence which exists between every employer and employee, which again

could be grounds for the employer disciplining the employee, says Michelle Chance, a senior associate at Fox Solicitors. “The employer could even apply to the High Court for an injunction against the employee to prevent them leaking further confidential information about the company or the company’s trade secrets on their blog.”

She adds: “It could also sue the employee for damages, although quantifying the amount of loss it suffers as a result of the leakage of confidential information or trade secrets may be hard to quantify. It could also be difficult for the employer to establish a causal link between the leakage of confidential information or trade secrets and any resulting financial loss.”

Employers may also have a case against an employee under this implied duty where they believe their reputation is put at risk. Hyde Clarendon College recently suspended an employee, Catherine Young-Southward, on these very grounds. The college alleges that her blog reveals that she took five pupils to a city centre bar, before allowing them to stay at her home.

Mark Tudor, a partner at law firm Matthew Arnold & Baldwin, adds: “In the case of *L Pay v Lancashire Probation Service* [2004] IRLR129, the claimant’s dismissal from the position of probation officer was upheld at appeal as a proportionate response to his publicising his interest in bondage, domination and sadomasochism on a website. Clearly, the appropriate reaction of an employer to comments published by an employee on the internet will depend on the circumstances in each case, but legally every employee owes his employer a duty of mutual trust and confidence which may be breached by defamatory comments.”

Dismissed for blogging

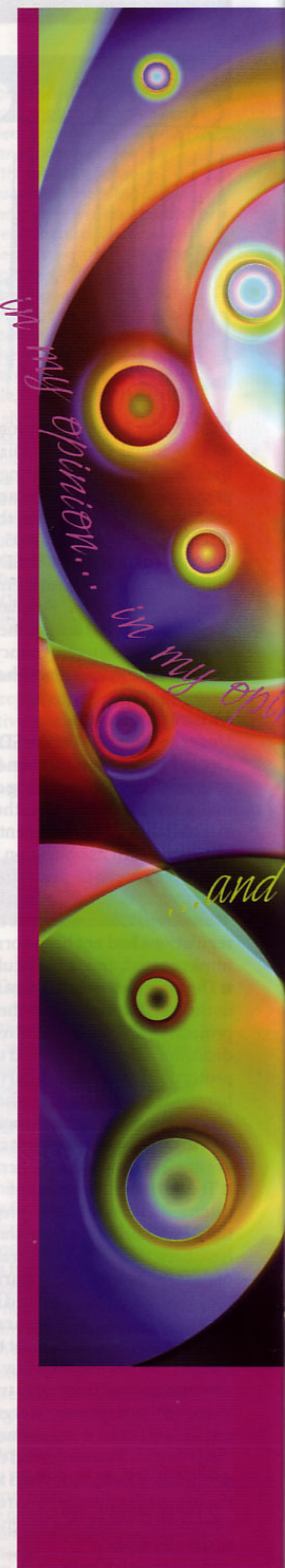
A number of employers have dismissed employees over blogs. In the US, where the blogging trend began, such companies include Google and Delta Airlines. In Google’s case, a young programmer started blogging just a few days into his new job, griping that Google’s health plan was less generous than his former employer’s and that the free food on offer was merely an enticement to work past dinner.

Meanwhile, Delta Airlines fired flight attendant Ellen Simonetti for publishing on her blog ‘inappropriate’ pictures of herself in her uniform.

Back on this side of the pond, probably the best-known example is Waterstones, which dismissed employee Joe Gordon for describing his employers as ‘Bastardones’ and his manager as Evil Boss.

But, cautions Tony Hyams-Parish, a partner at Rawlinson Butler, the fallout from such dismissals has usually caused more damage to a company’s reputation than the blogs themselves.

Daniel Naftlain, a partner at Mishcon de Reya, agrees. “Even where employers are determined to take disciplinary action, they should remember that they are



this is what



“Find a balance between respecting employee freedoms and protecting interests”

I think about the issues
I just had to write about this...

tion...

ask others to comment
ask others to comment

expected to follow the normal statutory procedures,” he says. He reminds employers that there are a lot of grey areas when it comes to employment law and blogging. “It is not all cut and dried – for example if a comment constitutes harassment or if a comment really does put the reputation of the company at risk.”

Employers should also note that a growing number of dismissed bloggers are fighting back. Catherine Sanderson, who was sacked by British accountancy firm Dixon Wilson in Paris after it discovered some entries it didn’t like on her blog, recently won her case for wrongful dismissal. Although this was in France, employment lawyers believe that if UK employers are found at tribunal to have acted too harshly, we could see similar outcomes here.

Other companies have banned blogging altogether, but Wilmott believes this can be counterproductive. “I think there is a balance that employers have to tread between respecting employee freedoms and privacy and protecting the interests of the business. If employers go too far down the line of Big Brother, we know from research that employees are less likely to feel positively about a company,” he says.

No names

As an attempt at finding a middle ground, some employers have warned bloggers to remain anonymous when writing about their workplace, but Teresa Dolan, an employment partner at Hammonds, says that even if a person hides their name or the name of their employer, people may still recognise them from other things they say. Indeed, this was the case with the Delta Airlines employee, who posed in uniform.

The consensus among employment lawyers is that the solution lies in developing a clear policy specifically relating to blogging as part of a wider internet and e-mail policy, that balances the right to free speech and any potential damage to you as an employer. The policy may prohibit employees from blogging in work time and set out the standards of behaviour expected of them, and the consequences of breaching the policy.

However, some employers have benefited from actively encouraging blogging. Microsoft is among companies that report a significant improvement to its reputation on the back of its blogging and the London Ambulance Service even allows two of its employee bloggers some gentle digs at official policy, because the majority of the content has the effect of creating a better understanding about what the ambulance service actually does.

‘Petite anglaise’ blogger wins sacking case

<http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/03/30/wblog30.xml>

Turn to our policy clinic on page 22 for advice about what to include in a blogging policy