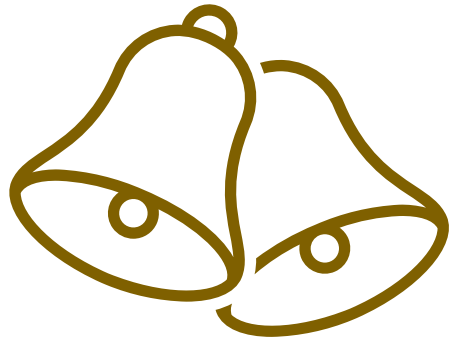


Employee conduct outside of the workplace

December 2024



Agenda for today



- Misconduct out of work: the law
- Social media
- Criminal offences
- Spotlight on party season

Misconduct out of work



- ‘Conduct’ is a potentially fair reason for dismissal in the ERA 96
- Can include conduct outside of work
 - “so long as in some respect or other it affects the employee, or could be thought to affect the employee, when he is doing his work”
 - *Singh v London Country Bus Services Ltd*
- Employer must be able to demonstrate that reason for dismissal was conduct and that they acted reasonably in treating that as the reason for dismissal

Misconduct out of work



Eggleton v Kerry Foods

Fighting outside of work

- Employee found to be fairly dismissed for fighting off site with a colleague in car park across the road from workplace
- Conduct clearly affected working arrangements as other employee didn't feel safe to attend work
- Didn't matter it involved a domestic matter, the ET held it was sufficient to breach the trust of the employer

Keable v London Borough of Hammersmith and Fulham

Employee political activity

- Council employee unfairly dismissed for conduct at a political rally which he attended in his own time in a personal capacity
- Filmed having a debate with opposing demonstrator where he expressed controversial views – subsequently shared by BBC where he was identified as an employee
- He was dismissed on the basis the comments were inappropriate and would bring the council into disrepute
- ET found that dismissal was unfair – employee had expressed his view in a lawful way outside of work with no link to his employer. Also noted he didn't seek to publish his views, it happened outwith his control

Key considerations from case law



- The misconduct should relate to the employment, role or have relevance to the employer's business – must be a 'link'
- Fact specific
- Consider full context of the situation
- Any damage to reputation or risk to the business should be investigated and evidenced
- Consider sanctions short of dismissal

Criminal offences



- Criminal offences committed outside of work may be a disciplinary issue if it has an impact on the employment
- May be appropriate to suspend to investigate in certain circumstances
- Except for regulated industries, no blanket requirement for employee to inform employer about criminal charges/cautions etc
- Criminal conviction can be morally challenging but is not automatically a reason for dismissal
- Could potentially result in an SOSR dismissal

Social media



- Social media can lead to conduct issues:
 - Making negative comments about their employer
 - Engaging in behaviour online not in line with company's values
 - Malicious comments made to other employees
- When can employers take action?

Social media cases



Apple v Crisp

Comments made by employee

- Employee made derogatory comments about Apple on Facebook about the Company's products also making reference to fact he worked there
- Apple's policies and training made clear that 'image' was a core value and made clear derogatory comments would be classed as gross misconduct
- Dismissal found to be fair

Taylor v Somerfield Stores

Employee Youtube video

- Employee posted a video of him bashing his colleague over the head with a bag full of other plastic bags in a storeroom was posted on Youtube. It had 8 views and the employee removed it after 3 days.
- A couple of weeks prior, the company had featured in a newspaper article due to the number of online videos showing employee misbehaviour. A memo had been sent to store managers emphasising the importance of preventing such video.
- The employee was dismissed for gross misconduct for posting inappropriate content that brought the company into disrepute.
- This was held to be an unfair dismissal. The dismissing manager had not watched the video and didn't investigate how many views it had
- The ET also took note of the fact no logo or company name was visible

Social media



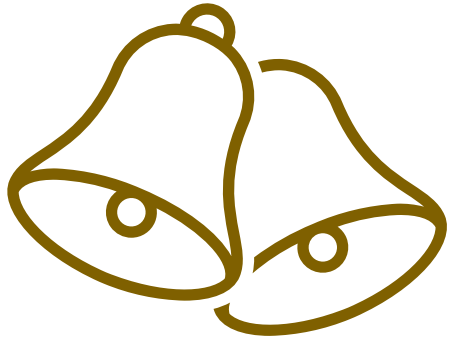
Key points

- Whether it is work-related is fact specific
- Investigate fully including actual impact of statement/comment
- Do not take a disproportionate view of damage or potential damage to reputation
- Information given to employees about corporate image/reputation is relevant
- Have a clear social media policy in place

The Christmas Party



- Party season can come with heightened risk
- Unofficial/official night out?
- Rules regarding alcohol at work events
- New prevention of sexual harassment legislation



Thank you!

Questions?

