



## Where two worlds collide

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At what point does an employee's out of hours conduct constitute a work place issue?



# Different Scenarios

- Social media
- Criminal allegations/convictions
- Social events
- Domestic violence
- Violence
- The Christmas party



# Challenges faced by employer

- Less formal working environment
- Flexible working
- Home working
- Digital etiquette



# Conduct Out of Work

*Singh v London Country Bus Service 1976 EAT*



# Social Media

*“HR accidents waiting to happen”*

A description of Facebook Trade Union Congress 2006

- Facebook
- Twitter
- LinkedIn
- YouTube
- Instagram
- Pinterest
- Flickr
- Tumblr
- Reddit
- Google+



# Guidance

*Preece v Wetherspoons PLC*

*Game Retail Limited v Laws (EAT)*

*British Waterways Board v Smith (EAT)*





# Misconduct elements

- Genuine belief
- Gross misconduct or misconduct
- Range of reasonable responses





# Arguments in Defence

1. No knowledge of postings made
2. The account bears my name and identification but does not belong to me
3. Readership is limited



# Arguments in favour of Gross Misconduct

- Comments are a breach of policy/procedure
- Nature of comments:
  - Violence
  - Harassment/discrimination (*Teggart v TeleTech UK*)
  - Disclosure of confidential information (*Zaver v Dorchester Hotel*)
- Don't jump to conclusions! (*Young v Argos*)



# Arguments in favour of dismissal

- Range of reasonable responses?
- GMC?
- Breach of implied duty of mutual trust and confidence?
- Compatibility with role and continued employment
- Seniority
- Alternatives to dismissal

## Key question

“Whether the conduct, once discovered by the employer, had an impact on the employee’s ability to do his job”.



# Vicarious Liability

“An employer is vicariously liable for the acts of its employees which occur in the course of their employment”.

*Otomewo v Carphone Warehouse*



# Social Events

*Waters v Metropolitan Police (CA)*

*HM Prison Service v Davis (EAT)*

*Chief Constable of Lincolnshire Police v Stubbs (EAT)*

*Sidhu v Aerospace Composite Technology*



# Criminal Allegations and Convictions

- If an employee is charged with or convicted of a criminal offence this is not normally in itself a reason for disciplinary action.
- Consideration needs to be given to what effect the charge or conviction has on the employees suitability to do the job and their relationship with their employer, work colleagues and customers.



# ACAS Guidance

- The Employer should consider:
  - Whether conduct is sufficiently serious to warrant instituting a disciplinary procedure.
  - At what stage to take disciplinary action.
  - If someone is in custody, can the job be held open?
  - Loss of licence, is alternative work appropriate or available?
  - Failure to cooperate or inability to cooperate with the employer's disciplinary procedure.
  - Where a criminal trial is pending the employer must consider:
    - Size of its business;
    - Nature of business;
    - Number of employees;
    - Terms and conditions of employment and disciplinary code.





# Can the Employer rely on police investigations?

*Harding v Hampshire County Council*



# Potential Grounds upon which an employer can dismiss?

1. Where criminal conduct is incompatible with the nature of the work.
2. Reputational risk.
3. Guaranteeing a safe working environment for the employee.



# Domestic Violence

“Other conduct, both inside and outside employment, considered to be seriously detrimental to the Group, its property , employees customers or members of the public or creating a security, safety or health hazard”.

*CJD v Royal Bank of Scotland (EAT)*



# Violence Off-Site Involving Employees

## *Eggleton v Kerry Foods Limited*





# The Christmas Party



any questions?





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