

Case Update



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Employer liability for social media posts

The employee in this case was a security officer at an airport. One of his colleagues posted an image of a golliwog on Facebook with the comment "Let's see how far he can travel before Facebook takes him off". The employee was shown the post by another colleague (as the employee himself was not a Facebook friend of the colleague who posted the image). The employee raised a grievance. The grievance was upheld and the colleague who posted the image offered an apology and received a final written warning. The employee brought a claim of harassment against his employer. One of the issues in the case was whether the employer could be liable for a Facebook post made by an employee outside work on their personal account.

The Employment Tribunal and the Employment Appeal Tribunal ruled that the employer was not liable. An employer can only be liable for harassment by an employee which occurs in the "course of employment". The posting of an image on a private Facebook page, outside work, where few work colleagues were Facebook friends, could not be considered to be in the course of employment.

This case highlights some of the workplace challenges posed by social media. It can be difficult to draw the line between what is "in the course of employment" and what is not, and social media can make the distinction even more difficult. It was relevant in this case that the colleague who posted the offending image on Facebook did not have many work colleagues as Facebook friends but the position could be different where a large number of colleagues are all friends on Facebook. More importantly, the employee in this case argued that the employer should be responsible for the actions of the colleague who posted the image on Facebook, rather than the colleague who showed the employee the image. Had he argued the case differently, the employer may have been liable.

As this case shows, an employer would usually be justified in taking action against an employee who posts offensive or harassing comments or images on social media outside work where colleagues take offense or are themselves the target of such posts.

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