**Can the private life of an employee affect their employment?**

Widespread use of the internet and social networking sites have made the 'personal' potentially 'public', and this blurring of the boundaries can present HR professionals with some tricky situations, says Steven Thomas.

Only last month, an insurance worker was dismissed after surfing Facebook while off sick. Not such a bad thing, you may think, until you realise that the employee had told her employer that she could not work in front of a computer as she needed to lie in the dark! Recognising that there is a need to strike a reasonable balance between business and private life, most employers allow reasonable personal use of the internet during breaks and outside normal office hours and will have in place a clearly defined 'internet policy' setting out the acceptable parameters for internet and email use during work time. ***"Most employers allow reasonable personal use of the internet during breaks and outside normal office hours and will have in place a clearly defined 'internet policy'"***What, however, are the implications for employers when, through the internet or other media and sometimes completely by accident, they become aware of certain aspects of an employee's or candidate's private life that, in the normal course of events, they would be completely unaware of?  In particular, when, and to what extent, is an employer entitled to legitimately say that the private life of an employee is relevant to their employment? Potential misconduct  Where information comes to light over the internet suggesting misconduct at work, employers are entitled to investigate and, if the allegations are made out, discipline appropriately. This may include incidents of 'cyber bullying' of colleagues or situations where an employee has claimed to be too sick to work but where evidence has been obtained that suggests otherwise. If proven, such cases would probably fall squarely within the definition of gross misconduct. Situations may occur, however, where evidence is obtained of conduct outside of the workplace which may potentially have a bearing on the employee's ability, or suitability, to do their job or which may bring the employer into disrepute.      Two recent cases, both widely reported in the media, have highlighted how difficult this issue really is.  Both cases involved female employees being engaged in 'out of work' activities that were sexual in nature. One of the employees was a stewardess with Ryan Air who was also an actress in the [\*\*\*] industry and the other was a primary school teacher who posed for photographs that were featured on a website for glamour models.  ***"Situations may occur, however, where evidence is obtained of conduct outside of the workplace which may potentially have a bearing on the employee's ability"***Whilst both individuals were allowed to keep their jobs, the employers' reactions were very different.    In the Ryan Air case, the airline simply said that whatever its employees do in their spare time is their business. However, as a result of a number of complaints received from parents, the teacher was subject to a disciplinary procedure which, whilst it concluded that the photographs were not pornographic, did find that her conduct was completely inappropriate and had brought the school into disrepute. The school did hold, however, that the matter would have been treated even more seriously had the photographs been pornographic in nature and so it is likely that the Ryan Air stewardess would have been dismissed if she had been a primary school teacher.  **Guidance for employers** A recent case heard in the European Court of Human Rights (ECHR) provides employers with some guidance on this issue.  In *Pay v United Kingdom,* the ECHR held that the dismissal of a probation officer as a result of his involvement in bondage, domination and sadomasochistic performances (BDSM) neither breached his right to a private life nor his right to freedom of expression under Articles 8 and 10 of the European Convention on Human Rights. Mr Pay was employed by the Lancashire Probation Service (LPS). He informed LPS of his directorship of Roissy Workshops Limited. It subsequently came to light that Roissy advertised on the internet as a maker and supplier of BDSM products and organiser of BDSM events and performances. Roissy's website contained links to other BDSM organisations which showed photographs, said to have been taken at a private members' club, of Mr Pay semi-naked and performing acts of domination over submissive women. LPS concluded that Mr Pay's behaviour was incompatible with his position as a probation officer on the basis that material that was in the public domain could undermine the reputation of the probation service and public confidence in its officers' integrity. Mr Pay was dismissed and his internal appeal against dismissal was unsuccessful. Mr Pay was unsuccessful in the employment tribunal and, ultimately, the court of appeal and so took his case to the ECHR.  The ECHR considered the extent to which an employer can legitimately take action against an employee as a result of discovering facts about the employee's private life, including events that take place away from the work environment. ***"Events in an employee's private life may have negative repercussions for their employment and that employers may legitimately have regard for an employee's life away from the workplace"***In dismissing Mr Pay's case, the ECHR took into account the nature of his role, his relationship with the offenders with whom he worked, the need for public confidence to be maintained and, importantly, of the potential damage to his employer's reputation. Although claims under the convention are not a direct concern for employers in the private sector, the court of appeal, in a previous case of a similar nature, has confirmed that convention rights are relevant to an employment tribunal's application of domestic legislation between private individuals and their employers and so the factors taken into account by the ECHR are worthy of note. This decision confirms that events in an employee's private life may have negative repercussions for their employment and that employers may legitimately have regard for an employee's life away from the workplace, provided that they are relevant to the employee's role or injurious to the employer's reputation. However, employers do need to ensure that any such alleged misconduct really does have relevance to the workplace. Employers should not instigate disciplinary procedures in respect of conduct which, whilst they might personally disapprove of it, has no real adverse impact either on the employee’s ability or suitability to do their work or on the employer's reputation. To do otherwise could potentially expose employers to discrimination claims or unfair dismissal claims