#66 HR Newsletter
Sept 2015: Social Media

Macnaughton McGregor
Training Learning Impact

The perils of Social Media - Facebook comments

We have recently dealt with an increasing number of disciplinary cases and dismissals as the result of inappropriate postings on social media.

This case below (Scottish Canals) was settled at the Employment Tribunal Appeal Court on behalf of the Employer but highlights the difficulties Judges are having in making sense of "how bad" people's posts actually are.

The general rules are that if people post items on their Facebook page then this text ***IS*** in the public domain for all to see. (Offensive language can be treated in the same way as if they had sent an email internally) and a **written warning** is the normal sanction.

Only if they are bringing their company into disrepute (and their company is named and therefore broadly identifiable to others) and other clients or customers have seen this post (and therefore it could truly have a derogatory effect) are you in a situation where you would contemplate **dismissing** the employee.

Case Summary:

An employment tribunal was wrong to conclude that a Scottish Canals employee was unfairly dismissed after he posted Facebook comments boasting of getting drunk while on emergency standby and describing his managers as "wankers" and "pricks".

Unfair dismissal: no special rules apply to Facebook misconduct cases

British Waterways Board (t/a Scottish Canals) v Smith is the first Scottish appellate decision on Facebook misconduct. The Employment Appeal Tribunal (EAT) overturned the employment tribunal decision that the employer had unfair dismissed an employee who made inappropriate comments about work on his Facebook page.

Mr Smith was a canal operative who worked on standby for emergency call outs. Alcohol consumption is not allowed during a standby period. His employer became aware that he had posted some derogatory comments about his managers on Facebook.

Comments included "*going to be a long day I hate my work*", "*why are gaffers such pricks, is there some kind of book teaching them to be total wankers*" and "*on standby tonight so only going to get half pissed lol*".

Mr Smith admitted that he had made the comments, but contended in his mitigation that he thought his Facebook account was private and that his comments were only banter. He also relied on his eight years' good service, that the comments were two years old, and that he had not identified his employer by name.

He was dismissed and successfully claimed unfair dismissal in the employment tribunal. The tribunal found that the employer should have taken into account the mitigating factors and that his employer was not readily identifiable.

The EAT overturned the tribunal decision, saying that it had substituted its own views of what was fair. The employer was entitled to take Mr Smith's misconduct seriously and it carried out a fair procedure before dismissing him.