



# Client Alert

Central European Advisory Group  
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## Facebook – an Employer’s Nightmare (a case study)

Virtual social networking sites like Facebook and blogging are growing more popular by the day. Employers and HR companies utilize some of these networks for vetting job applicants. However, with a wider user base, problems have arisen.

Where are the actual limits to one’s freedom of speech and where does the loyalty of an employee towards his employer end? Can employees on a social networking site express their opinion on current political situations? Can they publicly criticize the processes implemented in their company or even write a satirical contribution or humorous blog in which the main character is an unpopular boss or a derided colleague? How free are our employees within the social networks and what do we not have to put up with?

On the face of it, the private activity of a user of a virtual social networking site can have an impact not only on his work productivity but especially on the reputation of his firm and its position in the market. Below, we touch briefly on some challenges, employees can cause (as users of virtual social networks) and the means of their solution.

1. I was discussing the current affairs of my firm with a friend of mine when I was shocked by the information he had about my firm that was not based on any truth whatsoever. “Where do you get this information?” I asked. “Among my friends on Facebook is XY,” he answered, “who works at your firm and mentioned it not long ago during a chat on the website.” The whole ride home, I thought how I can protect my company, how can I defend it from such slander? Can everybody on Facebook say whatever they want?

*Of course legal regulations apply even to users of virtual networking sites. More difficult is, however, their concrete application because it is often difficult to track down the violator in question. It always depends on the character of the information; the fundamental principle of defense could be the protection of personality (right of privacy) or the protection of the reputation of a legal entity. And here applies even the standard that spreading true information can be illegal because the Supreme Court of the Czech Republic has ruled that spreading true but sensitive information without the consent of the subject concerned is illegal.*

*Another consideration is labor-law regulations because the employee might be violating his confidentiality obligations when acting in conflict with the legitimate interests of his employer, which could lead to the possibility of severing the work relation (serving notice or even immediate dismissal). A claim for damages caused to the employer by the employee’s actions is another available remedy, although success would be unlikely (difficult to prove).*

*Whether or not it would also be possible to proceed under competition law (in particular, laws forbidding unfair competition) depends on the character of the employee’s dealings and also the employee’s position.*

*In a really marked infringement of the rights of the damaged party, criminal proceedings could also come into consideration (such as for slander, infringing the rights of others, etc.).*



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2. Our company has 70% of its profit based on successful state procurements. As a supervisor, it occurred to me to check on some of our employees to see whether or not they are doing something which could potentially threaten the positive image of our company among officials in state administration. I was surprised. Some of our employees had presented their negative opinions of certain politicians, political parties or concrete authorities on Facebook. Of course I can hardly block freedom of expression; moreover, I may have similar opinions to those of my employees. Nevertheless, customer orders from state agencies are important to me, and without them, these critics would only be former employees. So, what should I do and how can I defend myself?

*Even in this case, it is possible to refer entirely to the commentary in point 1, since the violator is an employee. The answer is to get rid of the employee, because any kind of consequential exercising of claims against the employee (for damages caused) can be problematic and uncertain of success. Your company's internal regulations could set certain obligations on your employees as it may concern this area; however, these obligations must be in accordance with the Declaration of Basic Rights and Freedoms.*

3. Not long ago on the Internet, I tried to find financial information on our competitors. But, I was simply shocked to find details on individual customers of my own firm, including margins and revenues. All of this was stated on a blog of one of my employees. Is it possible to dismiss him immediately for bringing such information out in the open?

*The Labor Code sets forth that an employee is under the obligation not to behave in a manner which is in conflict with the legitimate interests of his employer. But, it is recommended to include concrete provisions on confidentiality in your work agreements or internal regulations. With these in place, it would be possible to terminate the work relationship (by either serving notice or immediate dismissal).*

4. I would like to find out how much time our employees spend on the Internet, engaged in something other than their work. This question has occurred to me several times after being astonished at how fast my employees are able to switch screens on their monitors when seeing me approach. Would keeping tabs on this be possible, and is it legal to fire an employee for spending more than 25% of his work hours on Facebook or other social networking sites?

*This problem is addressed by several legal regulations found in the Civil Code, the act on personal data protection, the act on electronic communication, and the Labor Code. The legislation primarily protects an employee's privacy, so monitoring the employee is only possible within definite limits and when specific conditions are met. It is necessary to inform the employees of the monitoring and familiarize them with its principles, and for this, a suitable tool would be internal regulations. Insofar as the employee would then violate his obligations ensuing from the internal regulations (with which it can be proven he was familiarized), the conditions can then be fulfilled for serving notice of dismissal. However, it is always necessary to judge each case individually, with regard to all circumstances, the employee himself, and his employment position.*