

Social Media

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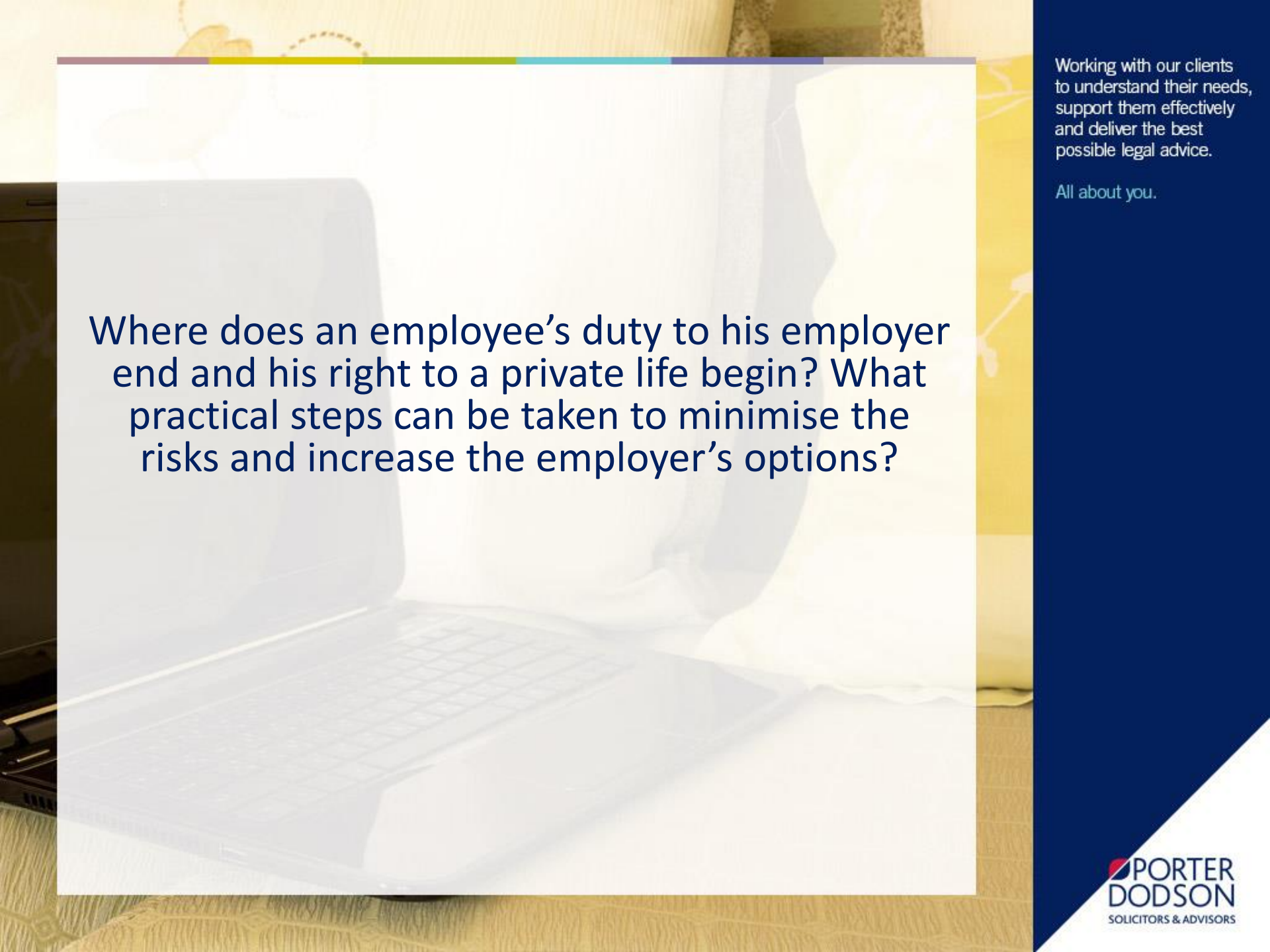
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Where does an employee's duty to his employer end and his right to a private life begin? What practical steps can be taken to minimise the risks and increase the employer's options?

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Introduction

Trades Unions Congress described Facebook's 3.5 millions users (at the time) as

"HR accidents waiting to happen".

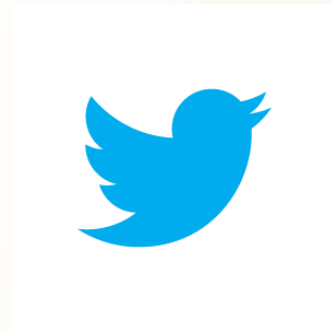
Where does an employee's obligations towards an employer end and his private life begin?

Can be **difficult** to draw a distinction...

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What is Social Media?



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Employer Issue 1

Unacceptable postings on social media

Public posting vs Private posting?

Gosden v Lifeline Project Limited [2009]

- “it is your duty to pass this on”.
- espoused racist and sexist views.
- close connection to the individuals referred to in the email.

What if there is **less of a connection** between employee’s job and the inappropriate posting?

Best approach: Have a social media policy which clearly sets out the standards expected from employees when using social media.

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Employer Issue 2

Prospective Audience

Preece v JD Wetherspoons plc [2010] – **not a private post**

Taylor v Somerfield (unreported) – **no clear association**

Size of the audience is directly relevant unless conduct is so serious.

Best approach: All employees should assume that anything they say on social media is potentially public in nature and employers should warn of this in a social media policy.

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Employer Issue 3

Criticising the Employer

Damage to reputation or comments bringing the employer into disrepute must be “**more than merely fanciful**”.

Taylor v Somerfield (unreported) – only 8 people viewed the video

Breach of implied duty of mutual trust and confidence

- Employee must be **sufficiently senior**.

Best approach: Have a social media policy which makes it clear to employees how seriously the employer treats its reputation and addresses the disciplinary consequences of publishing negative comments online.

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Employer Issue 4

Online Bullying and Harassment

Vicarious Liability – “**acts done in the course of employment**”

Chief Constable of Lincolnshire Police v Stubbs [1991] after work drinks and leaving party in a pub = **in the course of employment.**

Sidhu v Aerospace Composite Technology Ltd – family fun-day with family and friends, arranged by employer = **not in the course of employment.**

Best approach: Have a bullying and harassment policy as well as a social media policy.

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Social Media Policy 1

What is the best way to deal with the challenges of social media?

Have an up to date and comprehensive social media policy.

- **Educate** employees.
- Set down own **rules** for social media use.
- Provide the employer with a **right to discipline** employees.
- **Reduce** the chance of Employment Tribunal **claims**.
- **Increase** the employers chances of **success**.

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Social Media Policy 2

What to include in a social media policy:

- A warning that posts on social media should be treated as public, not private.
- Restrictions on references to the employer's name.
- Prohibition of bullying and harassment, online or otherwise. (Also consider a separate bullying and harassment policy).
- Prohibition of posting derogatory comments about the employer, colleagues, clients or other third parties.
- A warning that a breach of the social media policy is likely to lead to disciplinary action up to and including dismissal.

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Questions?



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