

Socialising at Work: The Implications of using Social Media in the Workplace in KSA

Zahir Qayum - Senior Counsel - Employment and Incentives
- Al Khobar

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Introduction

The KSA ranks seventh globally in terms of individual accounts on social media with an average of seven social media accounts for each individual. Facebook, Twitter, Whatsapp, Instagram and YouTube are in frequent use. Saudis account for over 40 per cent of Twitter users in the MENA region with the average Saudi user tweeting up to five times a day. The KSA ranks fourteenth in terms of Whatsapp users and has the highest per-capita YouTube use of any country in the world.

As a business tool, social media offers a high level of connectivity with customers and the ability to generate brand name recognition and exposure. In the workplace, social media can be an invaluable human resource tool for employers at all stages of the employment cycle; from pre-employment screening to post-termination interactions. However, its misuse by employers and employees could have serious implications for both. This article considers some of the important issues that can arise from the use of social media in the workplace and how these can clash with the rights of the individual to privacy and to protection from defamation under KSA laws.

Rights of the Individual

There are a number of laws in the KSA that safeguard the rights of the individual to privacy and to protection from defamation where information is transmitted electronically. These are as follows:

- The Basic Law of Governance No: A/90 dated 27th Sha'ban 1412H ("Basic Law") protects the privacy of individuals by safeguarding telegraphic, postal, telephone and other means of communication and making it unlawful to confiscate, delay, read or breach them;
- The Telecommunications Act issued under the Council of Ministers Resolution No.74 of 2001 ("Telecommunications Act") restricts the disclosure of information or content that is intercepted in the course of its transmission and imposes a fine of up to SAR 5,000,000 for a breach;
- The Anti-Cyber Crime Law enacted by Royal Decree No. M/17 ("Anti-Cyber Crime Law") makes it an offence to:

- spy on, intercept or receive data that is transmitted through an information network without authorization;

- invade privacy through the use of camera equipped mobile phones;

- unlawfully access computers in order to delete, erase, destroy, leak, damage, alter or redistribute personal information; and

- defame or inflict damage on a person through the use of IT devices.

Where no specific protections are set out in legislation, the KSA courts will apply Shari'ah law. The Shari'ah is comprised of a collection of fundamental principles derived from a number of different sources, which include the Holy Qu'ran and the Sunnah (which are witnessed sayings and actions of the Prophet Muhammed PBUH). Shari'ah law principles protect an individual's right to privacy and prohibit any invasions of it. They also prohibit the disclosure of secrets unless the owner of the secret consents to it or it is in the public interest to disclose it. Liability for disclosure will pass to any third party who improperly discloses personal information that is obtained unlawfully. The extent of the liability and penalties for breaching Shari'ah law principles will be determined on a case by case basis. Penalties may include imprisonment, monetary compensation and/or deprivation of certain rights.

Employers must be careful to ensure that their use of social media does not impact on the rights of individuals.

Implications of Social Media Use in the Workplace

Commonplace issues that often arise from the use of social media in the workplace are:

- Online Screening

Employers are increasingly reviewing the social media footprints of potential candidates for employment as part of their recruitment process. Sites such as LinkedIn and Facebook can be useful to verify work histories and to assess the character and suitability of candidates through information made available in their social media postings.

Employers in the KSA are not prevented from conducting background checks or using social media in this manner. However, caution should be exercised where any information that could be argued to be private or prejudicial to the reputation of an individual is relied on to reject a candidate for employment; particularly where this information may have been inadvertently made public by the individual.

- Employee Monitoring

Employers have a right to protect their reputation, business interests and trade secrets and can feel justified in monitoring employee activity on social media sites that are accessed through the employer's IT equipment. This can either involve prohibiting access of social media during work hours or on work equipment, or monitoring activity or postings on social media.

Where monitoring is taking place without the knowledge or consent of employees then this could be breaching the Basic Law, the Anti-Cyber Crime Law or Shari'ah principles. Any monitoring undertaken by employers should be notified beforehand to employees and preferably set out in the employer's social media policy. Employee consent to monitoring should also be obtained before monitoring is carried out.

- Inappropriate Postings

Social media postings by employees that are derogatory, negative or offensive could have reputational consequences for employers where they are made on social media platforms supported by the employer or where they could otherwise be attributed to the employer. There is also a risk that such postings could be considered defamatory or damaging to an individual's reputation.

Employers can regulate the conduct of employees on social media where it is related to their work by forewarning that any postings that bring the employer into disrepute or are prejudicial to others will result in disciplinary action. This can be set out clearly in a social media policy and employees can be prohibited from making any statements or comments that do not fall within the guidelines set by the employer. Employees can also be required to clearly state where they are expressing a personal opinion so as to

detach liability from the employer.

- Personal vs. Professional Life

There can be a blurring of an employee's personal and professional life on social media where sites such as LinkedIn, Twitter and Facebook which require a personal subscription are also used for work purposes. There will be a risk that employees will assert that any contacts or information retained on these accounts is private and belongs to the employee.

Employers will want to ensure that the boundaries between personal and work life are not distorted and that employees are educated on how to keep their professional contacts and activity separate from their private lives. Consideration should also be given to requiring employees to accept non-compete restrictions to prevent employees from using business contacts obtained through their employment after it ends.

- Post-Termination Commentary

Employers are increasingly being requested to provide references for employees through social media sites such as LinkedIn. Where managers have established a connection with the departing employee on social media then this could lead to solicited or unsolicited comments being made about the employee. If the employer has adopted a policy of providing only a "neutral reference" (i.e. dates of employment and position held) then this could be undermined and expose the employer to legal action. The employee could be entitled to bring a defamation action or sue under the KSA Labour Law issued by Royal Decree No. M/51 dated 23 Sha'ban 1426 which prohibits an employer from making any comment in a reference that would be detrimental to the employee's prospects of obtaining new employment.

Departing employees could continue to post on social media comments or material that may be attributed to the employer. This could leave the employer exposed to legal action if it is perceived that such material is endorsed by the employer.

Employers should ensure that managers adhere to their policy direction on giving benign references. Departing employees should be informed that they should immediately change their employment status to confirm the termination of their employment and that they no longer have permission to post anything on behalf of the employer.

Conclusion

There is undoubtedly a benefit to the use of social media for work purposes and it can enhance the profile and marketability of a business. However, it can also lead to a blurring between the personal and professional lives of employees who are engaged on social media on behalf of themselves and their employers, which can leave employers exposed to the risk of legal action. Employers are advised to have a comprehensive social media policy and that employees are educated on the appropriate use of social media in the work context.