

Risks engendered by use of social media during employment

职场上使用社交媒体的风险

The prevalent use of social media during employment may create potential risks for companies ranging from information leaks to reputation damage. DLA Piper discusses possible supervisory measures for employees and provides practical guidelines to prevent a breach of data protection principles.

职场上对社交媒体的普遍使用可能会为公司带来潜在风险，例如信息泄露和声誉损失。欧华律师事务所（DLA Piper）将于本文讨论可采取的员工监督措施，并提供避免违反保障资料原则的实用指引。



Sharing personal and work-related information on social media sites has become a prevalent practice for many employees nowadays. Likewise, social media is also used by employers as a platform to connect with the public and to communicate within the workforce. However, the cliché that benefits always come with risks is never outdated. In this article, we will consider the risks of using social media in the course of employment and explore ways to get the most out of it.

Managing use of social media during employment



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What are the risks?

An employee's personal social media site may reveal a wealth of information about the employee. However, employers and employees should both be aware that posting employment-related information on social media sites may potentially pose the following menaces:

1. Breach of confidentiality

Employees may share information of the employer which may lead to a breach of their confidentiality obligations (in most cases inadvertently). This may expose the employer to the risk of losing valuable trade secrets or being sued by third parties to whom it owes a duty of confidentiality.

2. Defamation, discrimination or harassment

Social media sites have always been a popular platform for employees to taunt or attack coworkers against whom they have a grudge. These statements may sometimes amount to unlawful defamation, discrimination or harassment. Should an employee lodge a complaint or file a claim against another employee for statements posted on the internal social media sites, the employer may in some instances be held vicariously liable for the damage caused.



现今，员工普遍会在社交媒体上分享个人信息以及与工作相关的信息。同样地，雇主也使用社交媒体作为与公众互动以及内部交流的平台。然而，“风险与利益共存”这句老生常谈永远都不会过时。我们将在本文中讨论于职场上使用社交媒体的风险，以及能充分利用社交媒体的方法。

职场上使用社交媒体的管理

存在哪些风险？

员工的个人社交媒体网站可能包含很多个人信息。然而，雇主和员工均应意识到在社交媒体上发布与工作相关的信息可能存在以下的潜在危险：

1、违反保密协定

员工分享雇主的信息，可能违反其保密责任（大多数情况都是无意的）。雇主可能会因此承受失去有价值的商业秘密，或被第三方起诉（如雇主对其负有保密责任）所带来的风险。

2、诽谤、歧视或骚扰

员工在社交媒体上奚落或攻击与其有过节的同事已是司空见惯的事情，但那些陈述有时可能会构成非法诽谤、歧视或骚扰。如果员工因内部社交媒体上发布的言论而投诉其他员工，或对其他员工提出索赔，雇主在某些情况下可能要为此造成的损害承担转承责任。



3. Reputational damage

It is not uncommon for employees to make derogatory statements about their employer or managers to harbour their grievance. These posts can readily turn into negative publicity for the company, causing damage to its reputation which can be costly to restore.

4. Workplace Procrastination

Social media sites can cause distraction to employees. Use of social media during working hours can be a silent killer of both productivity and profits.

Monitoring employees' use of social media

To control the risks inherent in employees' use of social media, it is common for employers to monitor their employees' online activities. In Hong Kong, employers may monitor employees' work-related use of social media provided that such surveillance is necessary and not excessive and is in compliance with the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"), in particular its six data protection principles ("DPPs").

Monitoring employees' usage of social media in terms of social media sites visited and the time spent on them during working hours may not be too controversial, if there is an effective monitoring policy, and the employees have been informed that their usage will be monitored. The monitoring of content, however, is clearly more intrusive and may cross the permissible legal boundary.

3、声誉损失

员工很多时候都会发表贬损雇主或经理的言论以发泄不满，这些言论很容易为公司的声誉带来负面的影响，而其所造成的声誉损失修复起来代价巨大。

4、耽搁工作

社交媒体会让员工分心。于工作时间使用社交网站可能在不知不觉间降低了生产力和利润。

监控员工的社交媒体使用情况

为了控制员工使用社交媒体所带来的本质上的风险，雇主通常会监控员工的线上活动。在香港，雇主可以监控员工

在社交媒体上与工作相关的活动，前提是这类监控是必要的、适度的，且符合《个人资料（私隐）条例》（第486章）的规定，特别是其中六项保障资料原则。

如果雇主实行有效的监控政策，并告知员工使用社交媒体将被监控，那么在工作时间监控员工浏览的社交网站和在社交媒体上所花的时间，应不会有太大争议。但是，如果监控牵涉到社交媒体中的内容，这监控方式显然更具侵扰性，更可能跨越了法律界限。

为管理员工滥用社交媒体以及采用非法监控做法的风险，雇主应考虑以下事项：



1、遵守个人资料私隐专员订下的指引

个人资料私隐专员（“私隐专员”）制定的《保障个人资料私隐指引：雇主监察雇员工作活动须知》包含了雇主在监控员工活动时应遵守的指引。

该指引鼓励雇主运用“3A”评估法，对通过监控员工的社交媒体活动（如记录员工的网页浏览活动，以及邮件、电话或语音信箱的使用等）收集个人资料的适当性进行评估。这包括：

- 评估(Assessment)员工监控拟达致的益处与面临的风险；
- 考虑是否采用隐私侵犯程度较低，但同样划算、实用的替代方法(Alternative)来监控员工；
- 雇主处理从监控员工所收集的个人资料之相关责任(Accountability)。

2、实施社交媒体政策

为减轻滥用社交媒体风险带来的冲击，雇主应制定社交媒体政策，规定员工使用社交媒体可接受和不可接受的做法。实施适当制定的社交媒体政策有助于维护雇主利益，使其免于因员工滥用社交媒体而须承担潜在法律责任，或遭受声誉损失。

世上并没有适合所有公司的社交媒体政策，因为不同雇主有不同的着重点和可承受的风险水平。然而，雇主在草拟政策时，可以考虑以下事项：

- 说明公司将在工作场所监控员工对社交媒体的使用情况，并解释其将如何进行员工监控及员工监控的目的；
- 表明是否允许在工作时间浏览社交网站，如允许，解释允许浏览的原因，以及公司对此的容忍度；
- 规定使用社交媒体的合理限制，如限制带有歧视、威



胁、骚扰或其他非法成分评论或图片，禁止披露公司的保密信息、商业秘密和其他专有信息；

- 说明如果员工在社交媒体上的行为违反了在劳动合同下的义务（如保密责任）或公司政策，可能受到纪律处分，甚至被解除雇佣关系；
- 表明是否允许员工在社交网站上自称是公司员工，如允许，员工是否需要或在何种情况下应声明其观点不代表公司立场；
- 鼓励员工通过公司的申诉程序，而不是社交网站，表达与工作相关的投诉或问题；
- 制定独立的社交媒体政策，但确保与其他政策一致，如

公司的反骚扰和反欺凌政策、纪律细则和程序、电子通讯和IT政策、员工监控政策和该等政策的所有培训。

3、提供培训

雇主应教育员工合法使用社交媒体，确保员工了解社交媒体政策及明白使用社交媒体披露/滥用公司保密信息或发表非法言论的后果。

雇主应为管理层提供有关员工隐私权、适当及有效的员工监控、以及强制执行与社交媒体相关的各种公司政策、限制、指引和合同条款的特别培训。

To manage the risks of employees' social media misuse as well as the risks of having adopted an unlawful monitoring practice, employers should consider the following:

1. Follow the guidelines issued by the Privacy Commissioner for Personal Data

The "Privacy Guideline: Monitoring and Personal Data Privacy at Work" published by the Privacy Commissioner for Personal Data contains some guidelines to employers in implementing employee monitoring activities.

In these guidelines, employers are encouraged to undertake a "3As" assessment exercise to assess the appropriateness of personal data collection through monitoring employees' social media activities (e.g.

recording employees' web browsing activities, use of emails and telephone calls or voice mails etc.). This involves:

- having an assessment of the benefits and risks that employee monitoring seeks to achieve;
- considering whether are alternatives to employee monitoring which may be less privacy intrusive while equally cost effective and practical;
- accountability of the employer in relation to handling personal data obtained from employee monitoring.

2. Implement Social Media Policy

To cushion the blow of any risks arising from social media misuse, employers should put in place a social media policy which sets out guidelines for the acceptable and unacceptable use of social media by employees. Implementation of a suitably drafted social media policy will help protect employers' interest against potential legal liabilities and reputational damage arising from employees' misuse of social media.

There is no one size fits all social media policy as different employers will have different priorities and risk appetite. However, employers could consider the following when drafting the policy:

- state that the company will monitor its employees' use of social media in the workplace, and explain how and for what purposes employee monitoring will be carried out;
- address whether access to social media sites is allowed during working hours, and if so explain the purpose of allowing access and the company's level of tolerance towards personal use;
- include appropriate restrictions on the use of social media, such as restricting comments or pictures that are discriminatory, threatening, harassing or otherwise unlawful, and prohibiting the disclosure of the company's confidential information, trade secrets and other proprietary information;
- state that employees' conduct in the social media arena which breaches their obligations under the employment contract (e.g. duty of confidentiality) or the company's policies could result in disciplinary action and may lead to termination of employment;
- address whether employees are permitted to identify themselves on social media sites as employees of the company, and if so whether or in what circumstances they should state that their views do not necessarily reflect the views of the company;
- encourage employees to raise work-related complaints or concerns through the company's grievance procedures instead of social media sites; and

雇主对社交媒体的使用

雇主使用社交媒体与公众互动时，应注意以下事项。

使用和披露员工的个人资料

几乎所有雇主从雇佣关系一开始就收集员工的个人资料，而雇主为了业务发展之目的（如推广自己的服务或产品）通常都会在其网站或商务社交网站上披露该等资料。例如，为了增强公司对潜在客户或求职者的吸引力，雇主可能在网站或刊物上刊登员工的照片或教育背景。如没获得员工的同意，该等披露有时可能构成过度披露个人资料，雇主或难以证明该等披露的正当性。

避免违反保障资料原则的可行办法？

雇主可要求员工签署符合保障资料原则的《收集个人资料声明》，并充分说明员工信息的预期用途。这应有助解决大多数与资料收集和使用相关的问题。这方法，对维护雇主的立场比其他更为琐碎的办法要直接得多，比如在社交媒体上使用员工个人资料前要求员工另行签署同意书，或编辑或删除员工及前员工的个人资料，从而无法从中确定其身份。

最佳做法是，雇主制定在社交媒体上合法使用员工信息的政策或指引，并就员工隐私权为相关员工（如商务拓展、IT和人力资源团队）安排足够的培训。✍️

- have a standalone social media policy but ensure it is consistent with other policies such as the company's anti-harassment and anti-bullying policy, disciplinary rules and procedures, electronic communications and IT policies, employee monitoring policy and any training on those policies.

3. Provide Training

Employers should educate employees on the compliant use of social media. They should ensure the employees are aware of the social media policy and understand the consequences of disclosing/ misusing the company's confidential information or making any unlawful statements when using social media.

Special training should also be provided to the management on employees' privacy rights, appropriate and effective employee monitoring as well as enforcement of the various company policies, restrictions, guidelines and contract provisions relating to the use of social media.

Employers' use of social media

When using social media to connect with the public, employers should be mindful of the following issues.

Use and disclosure of employees' personal data

Nearly every employer collects personal data of its employees from the onset of their employment, and it is common to publish some of such data on their

own websites or business social media sites for business development purposes, such as marketing their services or products. For instance, to increase their appeal to potential clients or job applicants, employers may post photographs or education details of their employees on websites or publications. Without obtaining the employees' prior consent, such publication could sometimes amount to excessive disclosure of personal data, which employers might find difficult to justify.

A possible approach to avoid breaching the data protection principles?

Requesting employees to sign a Personal Information Collection Statement ("PIC Statement") which complies with the DPPs and adequately addresses all intended uses of employees' information should resolve most of the issues surrounding data collection and data use. It is more straightforward than the other more tedious means to protect the employers' position, such as requesting employees to sign a separate release prior to using their personal data on social media sites; or redacting or anonymising employees and ex-employees' personal data so that it is not possible to ascertain their identity.

For best practice, employers should put in place policies or guidelines relating to the compliant use of employees' information on social media. Adequate training regarding employees' privacy rights should also be arranged for relevant personnel, such as the business development, IT and HR teams. ✍️