IAJ 4th Study Commission: Social networks and labour relations

Preamble

The workplace is part of the public sphere which includes the right to privacy.

It is generally considered appropriate to balance between the worker's interest to the protection of his privacy and the competing interests of the employer and the society to disclosure of information and to preventive surveillance of workers. These competing interests are most often dictated by security and productivity concerns.

The technological innovations facilitate the employer’s control over the worker’s activities in the workplace and thus increase the risk of conflict between the interests of the enterprise and the worker’s right to privacy. The border that separates professional life from privacy is therefore very fragile and it reveals that the two spheres (private and public) are not perfectly sealed anymore.

Therefore, the purpose of this study is the protection of privacy that a worker can expect both with regard to his future employer (recruitment phase) or his employer (during his employment period), when information about him circulate on social networks (Facebook, LinkedIn, etc ...) or on blogs depending on:

— whether the worker is circulating this information by himself or it is done by third parties;
— whether there is a direct and free access to the information (« open profile ») or not (« closed profile »);
— whether we are talking about collecting information or using this information;
— the fact that the gathering and use of information is done by the employer or the information is collected by a third party and then made available to the employer who will use it.

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Questions

Q1: Does your country have laws or regulations that protect the confidentiality of electronic communications?

There is no specific regulation regarding the confidentiality of electronic communications, but confidentiality is protected under the Israeli Basic Laws:
Beside these regulations, there is a special collective working agreement - that covers the majority of the working places – which relates to the limits of confidentiality of electronic communication in the place of work.

Q2: If so, are these provisions applicable when the information are collected on social networks or blogs?

The regulations do not expressly address electronic media - social media networks or sites, but according to the latest judgement given by Israeli court of appeal (ac 8/90 Issacov v. the state of Israel ) the right for privacy may extend to private email account or social networks or media accounts (such as facebook, twitter etc), regarding private use.

Thus the right of privacy will not apply upon organisational use of online social forums or work place email accounts.

Q3: If so, are these provisions protecting the information collected or used by an employer

a. During the recruitment phase?

Employers could face liability if they access an employee's private social media accounts without the employee's permission.

Employers can be under a risk of using data, collected during the recruitment screening process, in a discriminatory way, by selecting or not selecting a candidate on the grounds of their race or age or sexual orientation or religious beliefs.
b. In the course of the employment for disciplinary reasons or others?

Under exceptional circumstances (i.e., evidence of wrong doing of the employee, where the employer has a reasonable believe that the employee's activity on the site relates to work related misconduct on illegal activities, the employer may reach private information on working data. If the employer wishes to reach private data on private accounts of the employee he must approach for court order.

Q4. Are the employees allowed to use social networks during working hours? If so, in which way?

The use of social media during working hours is a matter of practice and policy for individual employers, who can also block social sites on the employer's computers/devices used by the employee's at the place of work.

Q5: Can the employer monitor the use of social networks by his employees during working hours? Outside the working hours?

The employer can regulate the limits of use of social networks and private accounts at the place of work during working hours and must make sure that these regulations are known and agreed by the employees. At the same time, when the computer device is provided by the employer he can prevent use of social networks and private accounts by the employee by blocking the social sites.

In general - There is a different approach relating to the use of private social networks and accounts and public social networks or accounts. The employer can monitor the use of public social networks by the employees as well as working professional email accounts but cannot monitor any private use either when used on private platforms (private email account) or professional platform (working email).
Under exceptional reasons (such as a clear evidence of wrongdoing of the employer), that justify penetration of privacy of the employee regarding private matters, and under a preliminary consent of the employee (i.e., Consent to the employer policy given at the working contract), the employer can monitor the private use of the employee delivered on professional accounts.

Outside working hours – in general the employee has no power to limit the use of social networks of the employees. Still in certain state working positions (for security matters) there can be specific regulation limiting the use of social networks.