Mexico City – 2016

FOURTH STUDY COMMISSION

« Social networks and labour relations »

Questions

[1] Does your country have laws or regulations that protect the confidentiality of electronic communications?

The article 34-1 of the Portuguese Constitution states, as a general principle, that the secrecy of correspondence and other means of private communication (including the electronic communications) are inviolable, prescribing, as a result, that the public authorities (but also private entities – article 18-1 of the Portuguese Constitution) are prohibited from interfering in any way with correspondence, telecommunications or other means of communication, save in the cases in which the law so provides in matters related to criminal procedure (article 34-4 of the Portuguese Constitution).
The Portuguese Labour Law (article 22-1 of the Labour Code) gives workers the right to the confidentiality of private messages and the right to access information of non professional nature that they send, receive or look up, namely by electronic mail.

Nevertheless, the employer may establish rules for the use of the means of communication in the company, namely of the electronic mail (article 22-2 of the Labour Code).

[2] If so, are these provisions applicable when the information are collected on social networks or blogs?

There are not any legal provisions directly applicable to social networks or blogs, but the Portuguese Courts have, in general, accepted that the employer may use, against its workers (for example, in a disciplinary procedure), the information they collect in social networks or blogs if they are accessible to the general public or to a large number of people.

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

- during the recruitment phase?
- In the course of the employment for disciplinary reasons or others?

As there aren't any specific rules applicable to the recruitment phase or the course of the employment, the general rules stated above – about the confidentiality of private messages - are applicable in those two situations.

[4] Are the employees allowed to use social networks during working hours? If so, in which way?
The employer may forbid his employees from using social networks during working hours, especially if they are accessed using the computers or the internet access of the employer, but, if the employer hasn’t forbidden that use, the workers can use the social networks during his working hours as long as it doesn’t stop them from doing their work well.

[5] Can the employer monitor the use of social networks by his employees during working hours? Outside of the working hours?

The employer may forbid the use of social networks by his employees during working hours and can block or monitor the computers they use in their work (as long as that monitoring doesn’t amount to a violation to the secrecy of a private communication).

Outside of the working hours, the employer can’t monitor the use of social networks by his workers, but the actions of his workers in those social networks, namely when they use “open” social networks that are freely accessible to everyone, can be used against the workers in a disciplinary procedure, especially when they act in a way that violates their duties as employees (v.g., the good faith and loyalty to their employer) or undermines the reputation of the employer.

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