

## A work-life (social media) balance in the workplace?

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Amber Melville-Brown

PARTNER | US

**CATEGORY:**

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Friday afternoon; stuck in the grey office looking out at the glorious sun, your weather app forecasts a weekend of cold and showers. What's more, as others plan their Friday night fun, your boss has asked you to finish up a client report that is going to take hours. What do you do? Of course, you take to social media to vent about how your boss is – ahem – a bit of a nuisance. You may have done this yourself; you've certainly seen similar rants from friends, colleagues or connections on Facebook, Twitter or – with photo uploads now the trend – Instagram or Snapchat. But how much, or little, right to free speech does an employee really have when posting that boss-bitching comment or sharing that 'hilarious' snap of a work colleague? Well, which side of The Pond, are you on...? In the USA, free speech rules, or certainly seems to. Virginia Governor Terry McAuliffe recently signed a new law prohibiting employers in his state from requiring, requesting or causing an employee or job applicant to disclose to them the username and password of their personal social media accounts; and prohibiting the requirement of employees to add a co-worker, supervisor or administrator to their social media contacts or to change their privacy settings. Virginia is not alone in introducing such rules; a further 18 US states have introduced similar legislation in recent years to provide social media based protections to current and prospective employees who face pressure from employers to open up their social media profiles. The new Virginia law does provide that an employer can require an employee to disclose the username and password of a social media account if it has a reasonable belief that account activity is relevant to the employer's formal investigations or that it relates to proceedings regarding that employee's violation of laws or the employer's written policies. And many employers will have some scope to peek on these grounds. Wherever we are, we should remember that Cloud-based software, including Apple's iCloud, means that the messages we send, the photos we share on Snapchat or Facebook and the activities in which we participate on various mobile phone apps, are automatically synced up to our iCloud accounts. Where iCloud accounts are shared by employees and their employers through work phones for example, employers can potentially have easy access to private and even potentially incriminating email and photo exchanges. With the divide between professional and private life becoming increasingly blurred as we all spend more time at the office, or working remotely, the downsides of social media have to be grappled with by employers, authorities and governments. Back on this side of The Pond, the British Government has acted with less alacrity than our US cousins, and employers are sometimes taking matters into their own hands. In order to safeguard their contacts for example, some are increasingly making it a condition of settlement agreements on termination for employees to wipe from their social media accounts contacts who are customers, clients and colleagues and provide proof that they have done so. UK employment tribunal decisions in recent years have dealt with employees posting derogatory commentary on social media sites disparaging colleagues or clients and where that damages an employer's reputation, the culprit may justifiably face dismissal. Whether an employment tribunal judges a dismissal to be fair may be just as much about how 'good', or comprehensive, the employer's social media policy is as how 'bad' those comments in question, are. Tribunals must also take into account the rights of employees under the European Convention on Human Rights, including Articles 8 (the right to a private and family life) and 10 (the right to freedom of expression) in assessing whether employers have acted fairly. These rights are not absolute, so this is an exercise in balancing employee rights against those of the employer not to suffer disproportionate harm. The dismissals that actually make it into the tribunals are the tip of the iceberg but some high-profile departures, make the headlines. In April this year, Rory Cullinan, the chairman of RBS's investment bank described by investment analysts as 'phenomenal', departed from RBS by agreement. Mr Cullinan had reportedly used the photo-sharing app Snapchat to send images to his daughter with captions including 'Not a fan of board meetings xx' which his daughter then posted on Instagram – ironically around Father's Day of 2014. With his subsequent agreement – amid criticism that he was not seen to be taking his role seriously – to leave RBS, this was hardly the best father's day gift from his unwitting daughter. The new Virginian law may be a gift to employees, providing protection from invasive employer social media practices and policies. And with changes often happening in the US before we feel the ripples of change over here, it may not be long before we too catch up with the curve. What is clear, is that with the blurred lines between work and play and between 'real life' and our online lives, the balance between free speech and privacy and between responsibility and censorship, are issues that will be played out on this battle field for some time to come. Co-authored by [Amber Melville-Brown](#) [James Hockin](#)

# Authors

Amber Melville-Brown

PARTNER | NEW YORK, LONDON

Media and reputation

 +1 212 848 9813 (NY) +44 20 7597 6408 (London)

 [amber.melville-brown@withersworldwide.com](mailto:amber.melville-brown@withersworldwide.com)