

Workplace Relations

June, 08

Classified Information ... or Public Knowledge?

Computer technology has revolutionised the world and the workplace. However, the technology revolution has also created major challenges for employers, particularly when it comes to protecting confidential information.

For many employers, their competitive edge and the ability to maintain relationships with customers and suppliers depends on their ability to acquire, use and protect information. Traditionally the law has also recognised the need to protect the confidentiality of information by preventing employees from exploiting their employer's trade secrets or taking information such as client lists to go and work for a competing organisation.

However, computer technology has made it so much easier to store – and distribute – sensitive data and information. So what happens when an employer encourages employees to use Internet-based networking sites to build relationships with customers? Does the information uploaded to an employee's personal site cease to be confidential? And what if the employee resigns and uses the information to set up a rival business?

A United Kingdom Court has recently had to grapple with these issues in a case involving a recruitment consultant who networked with his clients using the LinkedIn Internet site, and then used the information to establish his own consulting business. The employer claimed that the employee's actions amounted to copying its customer lists, while the worker argued that the company had encouraged him to use the networking site and that the information could not be confidential because each customer had accepted an electronic "invitation" to have their details posted on the site. The case was high-stakes on both sides, with the employer wishing to protect its customer list and the employee potentially facing a large claim for breaching terms in his employment contract which prevented the misuse of confidential information and sought to restrict him from working for rival businesses.

While the case is far from over the employer appears to have achieved victory in the first round, with the Court finding that the confidential nature of the employer's information was not destroyed by making it publicly available on the LinkedIn site. Rather, the Court held that the employee's authority to use confidential information such as customer lists was limited to performing his work duties, and that he was not entitled to use the information outside his employment to set up a competing business. The employee was therefore ordered to disclose information held on his LinkedIn database so that the extent of his breaches could be assessed.

This Alert is intended as an alert only. It does not purport to be a comprehensive advice. Readers should seek professional advice before acting in relation to these matters.

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It is likely that this case will involve extensive and costly litigation before it is completely resolved. However, it sounds a warning to employers to take appropriate steps to protect sensitive business information, including:

- ensuring that confidentiality clauses in employment contracts are adapted to suit the particular types of e-business and electronic communications employees will be involved in;
- ensuring that employee exit procedures include arrangements for the return of confidential information such as electronic databases, and the deletion of client information stored on personal computers or mobile telephones such as client email addresses and telephone numbers;
- establishing workplace policies which regulate the use of email and the Internet, including social and professional networking sites;
- monitoring employees' use of technology so that potential breaches are identified and responded to in a timely manner, including systems which identify high risk transactions such as sending client information to home email addresses or transfers of information to other networks.

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