An overview of 30 jurisdictions

# Guide to Social Media Privacy

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Szecskay Attorneys at Law provides a full range of legal advice and assistance to the business community and over the past 20 years has been involved in a large number of M&A transactions. The firm typically acts for large local enterprises - established by multinational companies, or traditional Hungarian privatized corporations owned by large local investors - in connection with M&A, corporate, commercial, regulatory, financing, employment, real estate, competition, liquidation, environmental and data protection matters.

# I. Recruitment and Social Media

**1. Is there a specific legal framework for the use of social media in the recruitment context?**

There are no specific laws or regulations dealing with the use of information from social media in the recruitment context. However, the following general laws are relevant:

- Article 8 of the European Convention on Human Rights, 1950;
- Act no CXII of 2011 of the Act on the Information Right and the Freedom of Information ('Information Act');
- Section 10, Act no I of 2012 on the Labor Code ('Labor Code').

**2. Is it permitted to consult information which is publicly available on social media websites in the context of the recruitment procedure? What conditions apply (if any)?**

Yes. There are no specific restrictions on the screening of public social media profiles of job applicants.

However, the recruiter may not base its recruitment decision on information concerning the applicant's age, gender, health, race, political view, religion, trade union membership etc., which the employer obtained while screening the applicants' social media profiles. Any such decision would violate the principle of non-discrimination.

Processing (e.g. compiling and organizing) information collected from social media profiles is subject to the provisions of the Information Act.

**3. Is works council intervention required?**

No.

# II. Regulating and Restricting Use of Social Media

## A. Regulation During Working Hours

**1. Is there any specific legislation concerning the power of employers to restrict the use of social media during working hours or on corporate IT tools (such as company laptops, smartphones, etc.)?**

There are no specific rules or regulations concerning this matter.

However, a relevant general provision of the Labor Code states that the employee must not behave in a manner which endangers the lawful business interests of the employer.

**2. Can an employer totally prohibit the use of the company's electronic communication tools for social media purposes?**

Yes.

**3. If so, is the employer required to provide other communication tools to its employees which they can use for social media purposes?**

No. If the employer has prohibited the use of employer-owned equipment for social media purposes, employees do not have a right to use social media during working hours or on IT tools provided by the employer for professional purposes.

**4. Can an employer impose rules on the use of social media during working hours or on corporate IT tools?**

Yes. Employers are free to regulate the use of social media during working hours or on corporate IT tools.

**5. If so, is it required to stipulate these rules in a specific type of document, such as the work rules of the company?**

No. The employer can stipulate these rules in several types of documents. Typically, such use is regulated in specific by-laws of the company. It is also possible to regulate the use of social media in the employment contract but in such cases, any amendment requires the consent of the employee.

**6. Is an intervention of the works council required for the implementation of such rules?**

According to the Labor Code, employers are required to obtain the works council's opinion on proposed actions or by-laws if the proposals affect a larger group of employees. Such opinion must be requested at least 15 days prior to the decision on the planned action or by-laws. The term 'larger group of employees' is not defined in the Labor Code, but for example may mean all employees working in the same business line or unit.

The opinion of the works council must in particular be obtained with respect to the employer's action concerning the control or the protection of personal data of employees or the application of technical tools on the surveillance of employees. It is therefore likely that the opinion of the works council will have to be obtained when the employer wishes to set up rules concerning the use of social media during working hours.

## B. Regulation Outside Working Hours

### 1. Is there any specific legislation concerning the power of employers to restrict the use of social media outside working hours or on private IT tools?

There are no specific rules or regulations on social media use outside working hours or on private IT infrastructure. However, the Labor Code has some provisions which may be applicable to private social media use.

The Labor Code prohibits control of the employees' private life, but also provides that the employee must not behave outside working hours in a manner which is directly and effectively harmful to the employer's reputation or business interests or the fulfillment of the purpose of the employment relationship. The interpretation of this rule will depend on the nature of the employee's work and their position in the organization.

The Labor Code also declares that the employee's right to free speech may not be exercised in a way which grievously harms or endangers the employer's reputation or lawful business and organizational interests. However, any restriction must be proportionate and necessary for the achievement of the purpose. Prior notice of the restriction must be provided to the employee with the indication of the manner, the conditions and the expected duration of the restriction.

### 2. Can an employer impose rules regarding the use of social media by its employees in their private sphere (e.g. rules regarding the content of wall posts on Facebook, rules regarding sharing of information on chat websites or on private social media pages, etc.)?

Yes. The Labor Code allows the employer to impose rules regarding social media use which may restrict certain behavior and freedom of speech in their private sphere, consistent with the provisions outlined above.

### 3. Are there any restrictions on the employer's power to impose such rules?

Yes. The employer has no general right to restrict employees' behavior or right to free speech if there is no direct connection with the employment relationship. The employer must take into account the nature of the employee's work and the position of the employee in the organization in the course of imposing such rules. This means that for example, more restrictive rules may be introduced with respect to the CEO of the company than for an 'ordinary employee'. The employer may introduce rules which are necessary and proportionate to achieve the purpose of such regulation.

**4. Is an intervention of the works council required for the implementation of such rules?**

According to the Labor Code, employers are required to obtain the works council's opinion on proposed actions or by-laws if the proposals affect a larger group of employees. Such opinion must be requested at least 15 days prior to the decision on the planned action or by-laws. The term 'larger group of employees' is not defined in the Labor Code, but for example may mean all employees working in the same business line or unit.

The opinion of the works council must in particular be obtained with respect to the employer's action concerning the control or the protection of personal data of employees or the application of technical tools on the surveillance of employees. It is therefore likely that the opinion of the works council will have to be obtained when the employer wishes to set up rules concerning the use of social media during working hours.

## III. Monitoring of the Use of Social Media

### A. Monitoring Frequency of Social Media Use of Employees on Corporate IT Infrastructure

**1. Is there any specific legislation regarding monitoring of social media use of employees on corporate IT infrastructure (such as company laptops, smartphones, etc.)?**

No, there is no specific law governing the monitoring of the use by employees of company computers, emails, cell phones etc. However, the Labor Code declares that the employer may control the employee's behavior in connection with their employment, but prohibits control of the employees' private life. Control by the employer and the tools used may not violate the human dignity of the employees. The Labor Code also sets forth that the employees must be informed in advance of the technical tools used to control the employees (e.g. software checking the activities of the employees on the internet). Also relevant are several opinions issued by the data commissioner on monitoring the use by the employees of the internet, email correspondence and cell phones.

**2. Is it permitted to monitor whether and how much employees are using social media on corporate IT infrastructure? If so, are there any restrictions on such monitoring?**

Yes, monitoring is permitted under certain conditions: (i) internet access has to be provided to employees exclusively for the purposes of carrying out duties in relation to employment and not for private use, (ii) private internet use must be prohibited or restricted, (iii) the employer must inform the employees of (i) and (ii) and also of the fact that the employer is entitled to monitor and check internet use, (iii) the employer must inform the employees of their rights in connection with data management, (iv) all data protection obligations must be complied with, and (v) the

content of data must not be monitored, as this would require consent of third parties involved in the communication.

In the Data Commissioner's view, the following may serve as a valid legal interest of the employer for monitoring the internet use: (i) protection of economic, commercial or financial interests of the employer, (ii) safe operation of the employer's IT system, (iii) compliance with employment rules set by the employer.

**3. Is an intervention of the works council required prior to the implementation of technology which allows such monitoring?**

If there is a works council or trade union operating in the company, the works council must be informed in advance of the internet/social media monitoring policy.

**4. Can an employer impose sanctions when monitoring reveals that employees violate the rules regarding the use of social media?**

Yes. Depending on the gravity of the violation, sanctions typically vary from a warning to the termination of employment with immediate effect. Damages may also be claimed by the employer if damage was suffered as a result of the employee's violation.

**5. Can evidence of social media use in violation of the social media policy, which is obtained by unlawful monitoring of the employee's electronic communications and internet use, be used in a court proceeding?**

There is a risk that the evidence will not be accepted in court. In criminal proceedings, such evidence may not be used *ex lege*, whereas there is no such prohibition as regards civil or labor proceedings. However, it is questionable whether a judge will allow the use of such evidence.

## B. Monitoring Social Media Content

**1. Is there any specific legislation regarding monitoring of content of social media?**

No, there is no specific legislation dealing with this matter. As a rule, the employer may only monitor publicly available information on the internet under the conditions outlined above. The following general laws also apply:

- Article 8, European Convention on Human Rights, 1950;
- Article VI, the Hungarian Constitution;
- Articles 177/A and 178/A, the Hungarian Criminal Code;
- Act no CXII of 2011 on the Act on the Information Right and the Freedom of Information ('Information Act');
- Article 10 of Act I of 2012, the Labor Code.

**2. Is it permitted to monitor content of social media use of employees (e.g. wall postings on Facebook, statements on public chat websites, Twitter messages, private MSN-chat sessions, etc.)? If so, are there any restrictions on such monitoring?**

This depends on the type of media:

- Private media: as a rule, the employer may not monitor the employee's private life. In the event it is evident that the employee has used private media (such as chat applications) with a view to harming the employer's business interests or goodwill, monitoring may be permissible.

- Professional media: it may be permitted if the employer gave prior notice to employees of the prohibition to use employer's computers and laptops for private purposes. In this case, the employer may check whether the employee has complied with the prohibition.

- Posts on public social media: the employer may monitor publicly available information.

**3. Can content (e.g. content of a chat conversation) which is obtained unlawfully (e.g. without consent of the employee) be used as evidence in a court procedure (e.g. in the context of a dismissal procedure)?**

There is a risk that the evidence will not be accepted in court. In criminal proceedings, such evidence may not be used *ex lege*, whereas, there is no such prohibition as regards civil or labor proceedings. However, it is questionable whether a judge will allow the use of such evidence.

**4. Is an intervention of the works council required when implementing a policy regarding the monitoring of content of social media use of employees?**

If there is a works council or trade union operating in the company, the works council must be informed in advance of the internet/social media monitoring policy.

**5. Can an employer impose sanctions when monitoring reveals that employees violate the rules regarding the use of social media?**

Yes. Depending on the gravity of the violation, sanctions typically vary from a warning to the termination of employment with immediate effect. Damages may also be claimed if damage was suffered as a result of the employee's violation