



# OVERVIEW

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Welcome to the William Fry Employment Snapshot 2016 which looks at social media in the workplace over the last 12 months.

Social media platforms continue to raise issues from an employment law perspective. In our 2013, 2014 and 2015 social media reports, we examined employment related trends and issues affecting employers in Ireland. Our 2016 snapshot explores those developments and changes which have occurred in the area in the last year.

As in previous years, the research for our snapshot was conducted with almost 500 employees in domestic and international organisations based in Ireland.

Our research found that the percentage of employees who use their personal device to access social media at work has increased since 2013 by 18% to 78%. Accordingly, it is vital that organisations address use on personal devices as well as company devices when preparing their policies.

In addition, the vast majority of employees (96%) said their employer has never discussed with them what will happen to any work-related contacts held on their personal

social media accounts once they leave employment. With the market continuing to pick up and employees moving from one job to another with more frequency and speed, this is another area that organisations need to address to prevent the loss of valuable contacts and information.

Finally, case law emerging in Ireland over the last 12 months highlights the continuing need for employers to have a well-defined policy in place in order to have a defence to claims of vicarious liability brought by employees against the organisation in relation to the conduct of their colleagues.

We hope you find this snapshot interesting and informative and we welcome your feedback.

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# OUR SURVEY RESULTS



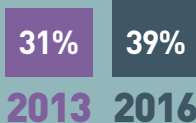
**MEN** SPEND MORE TIME ON SOCIAL MEDIA THAN **WOMEN** DURING THE WORKING DAY



39MIN

25MIN

**29MIN** SPENT ON **SOCIAL MEDIA** DURING THE WORKING DAY

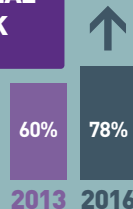


**EMPLOYERS** WITH A **SOCIAL MEDIA POLICY** IN PLACE

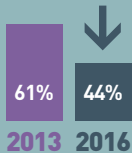
**25% OF EMPLOYEES** NOT SURE IF EMPLOYER HAS A **SOCIAL MEDIA POLICY** IN PLACE



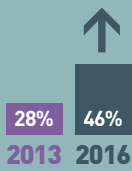
**EMPLOYEES** USE PERSONAL DEVICES TO ACCESS **SOCIAL MEDIA AT WORK**



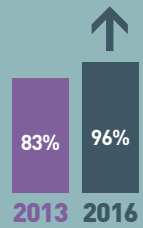
**36% OF EMPLOYEES** SAID EMPLOYER DOES NOT HAVE A **SOCIAL MEDIA POLICY** IN PLACE



**EMPLOYEES WITH WORK-RELATED CONTACTS ON PERSONAL SOCIAL MEDIA ACCOUNTS**



**EMPLOYEES SAY WHAT PROSPECTIVE EMPLOYERS MIGHT SEE ON SOCIAL MEDIA ACCOUNTS INFLUENCES THEIR POSTS**



**EMPLOYEES SAY THAT EMPLOYERS HAVE NEVER DISCUSSED WHAT WILL HAPPEN TO WORK-RELATED CONTACTS AFTER THEY LEAVE**



# BEST PRACTICE - RECRUITMENT / HR

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COMPLY WITH DATA PROTECTION AND EQUALITY  
LAW REQUIREMENTS IF DEALING WITH CANDIDATE  
INFORMATION SOURCED FROM SOCIAL MEDIA



DO NOT BASE A DECISION TO REJECT A CANDIDATE  
ON DISCRIMINATORY GROUNDS  
AS IDENTIFIED IN EQUALITY LEGISLATION

ENSURE EMPLOYMENT CONTRACTS REFER TO RELEVANT HR POLICIES  
INCLUDING SOCIAL MEDIA AND CONTAIN GOOD CONFIDENTIALITY  
PROTECTIONS AND APPROPRIATE POST TERMINATION RESTRICTIONS



IF DISCIPLINING EMPLOYEES FOR A SOCIAL MEDIA BREACH,  
FOLLOW FAIR INVESTIGATORY AND DISCIPLINARY PROCEDURES  
AND ENSURE DISCIPLINARY SANCTIONS ARE CONSISTENT AND  
PROPORTIONATE TO THE CIRCUMSTANCES

# BEST PRACTICE - POLICY

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PUT A SOCIAL MEDIA POLICY IN PLACE, MAKE SURE THE POLICY IS RELEVANT TO YOUR ORGANISATION AND SPECIFIC AS TO PROHIBITED ACTIVITY

ADVISE EMPLOYEES TO USE PRIVACY SETTINGS/LOCK DEVICES TO MINIMISE THE RISK OF UNAUTHORISED ACCESS TO DEVICES

IF YOUR ORGANISATION HAS SOCIAL MEDIA ACCOUNTS OPERATED BY EMPLOYEES, STATE CLEARLY HOW SUCH ACCOUNTS ARE TO BE MANAGED

COMMUNICATE THE SOCIAL MEDIA POLICY TO EMPLOYEES



ENSURE THE POLICY COVERS EMPLOYEE CONDUCT BOTH DURING AND OUTSIDE WORKING HOURS AND ACTIVITY ON EMPLOYEE-OWNED DEVICES

REVIEW THE POLICY REGULARLY



MAKE CLEAR IN THE POLICY THAT BREACH MAY LEAD TO DISCIPLINARY ACTION



SET GUIDELINES ON EMPLOYEES POSTING OR RESPONDING TO COMMENTS ABOUT YOUR ORGANISATION ON SOCIAL MEDIA

# BEST PRACTICE - USAGE

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ADDRESS THE ISSUE OF OWNERSHIP OF FOLLOWERS/CONTACTS/FRIENDS ON EMPLOYEES' PERSONAL SOCIAL MEDIA ACCOUNTS



ADVISE EMPLOYEES TO THINK BEFORE THEY USE SOCIAL MEDIA AND TO REMEMBER THIRD PARTY RIGHTS SUCH AS COPYRIGHT AND DEFAMATION

REMEMBER THAT EMPLOYERS MAY BE HELD LIABLE FOR ACTS OF BULLYING, HARASSMENT OR DISCRIMINATION CARRIED OUT BY EMPLOYEES ON SOCIAL MEDIA SITES AND THAT IT IS NOT ESSENTIAL THAT THE WRONGDOER BE ACTING IN CAPACITY AS AN EMPLOYEE

RETAIN OWNERSHIP AND KNOWLEDGE OF ALL USERNAMES AND PASSWORD DETAILS FOR ORGANISATION'S SOCIAL MEDIA ACCOUNTS



DO NOT ALLOW EMPLOYEES TO POST BUSINESS INFORMATION ON PERSONAL SOCIAL MEDIA ACCOUNTS

# SOCIAL MEDIA AROUND THE WORLD

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## IRELAND

**William McCamley v  
Dublin Bus 2016**

- Company rule prohibiting conduct 'prejudicial to the reputation and welfare of fellow employees' was held to be an effective provision to protect employees from harassment.
- While the Company rule was not an adequate substitute for a well-defined policy against the use of social media as an instrument of harassment, it was nonetheless a comprehensive provision aimed at protecting employees.
- Employer could avail of the defence that preventative measures were taken before the occurrence of the offending conduct.



## ROMANIA

**Bârbulescu v Romania  
2016**

- Access to private messages sent on company messaging system not a breach of employee's right to privacy.
- Interference must be limited in scope, proportionate and serve a legitimate objective, such as proving a disciplinary breach.
- It is not blanket permission for employers to monitor the contents of their employees' private communication.



## USA

**CDM Media USA  
Inc v Simms 2015**

- Social media contacts and control of groups linking professionals together based on a common interest can be considered trade secrets.
- The federal court in Illinois noted that the names of LinkedIn group members would be extremely valuable information to competitors.



## UK

**British Waterways  
Board v Smith 2015**

- Dismissal due to comments on Facebook posted two years previously upheld due in part to comprehensive social media policy.

**Whitmar Publications  
v Gamage 2013**

- Work-related social media data maintained on work IT systems are property of employer.





# THE RESEARCH

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The research in this report was undertaken by iReach Market Research. A range of questions relating to social media in the workplace was asked of 493 employees of companies operating in Ireland with 50 employees or more. All interviews were conducted in March 2016.

iReach Insights Limited is a full Marketing and Research Agency, across all research disciplines and methodologies.



# WHY WILLIAM FRY

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One of Ireland's largest law firms, William Fry offers unrivalled legal and tax expertise across the full breadth of the business sector. We advise many leading Irish and international companies, covering the public and private sectors.

With a staff of over 450, we operate a large international practice with offices in Dublin, London, New York and Silicon Valley.

Our Employment & Benefits lawyers advise on all aspects of employment law and practice. Our clients include many leading multinational and Irish companies, pension scheme trustees and public sector organisations.

*"Alicia Compton is highly knowledgeable, and consistently willing to consider a variety of viewpoints to ensure that her advice is fit for the particular circumstances."*

*(Chambers Europe, 2016)*

*"Catherine O'Flynn is a superior solicitor working for a top-class firm. She always guides and supports clients through all the issues."*

*(Chambers Europe, 2016)*

*"The team at William Fry takes a highly professional, informed and engaging approach, and has experience in high-profile litigation."*

*(Legal 500 EMEA, 2016)*

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