



Premier League chief's sexist messages highlight need for clear email policies

Employers can be held liable for employees' discriminatory remarks

Revelations about the inappropriate personal emails exchanged between the Premier League chief executive, Richard Scudamore, and some of his friends will probably have led many people to rethink the private use they make of their work email. Opinion on the case has been divided, with many commentators expressing their disappointment in Scudamore for mocking "female irrationality" and making other derogatory remarks about women. Others seem to regard the incident as either a breach of privacy or a storm in a tea-cup.

However, the fact that this has happened to someone with such a high public profile highlights what employment lawyers have long known – namely, that even very intelligent and successful people will sometimes risk their professional reputations by sending inappropriate emails.

Risks

Many employers now have an email policy warning staff that the sending of discriminatory or otherwise inappropriate emails will be likely to constitute a disciplinary matter. Those that do not have such policies should have. Inappropriate emails may be used as evidence in a dispute against the organisation. There is nothing to prevent a claimant requesting disclosure of any emails – including personal emails - tending to show that a particular employee holds discriminatory views or does not properly respect women, for instance. Even if they are not used in proceedings, such emails can be very damaging to the organisation's reputation, as they were in the Scudamore case.

Inappropriate communications of this sort are usually exchanged when the writers have their guard down, perhaps because they are writing to people they regard as friends and trying to be amusing. However, such supposedly "harmless banter" carries risks. It is irrelevant whether the comment in question was intended to cause offence, if it was capable of doing so.

When issuing his apology, Scudamore is reported to have said: "These exchanges do not reflect my views towards women in football, the workplace or in general". But he is also said to have accepted that he now had a lot of work to do to convince people of the true measure of who he is and what he believes is his work in the areas of equality and discrimination over the years.

This sums up the problem with such emails. If you are accused of behaving in a discriminatory way in relation to someone's appraisal, promotion, bonus or dismissal, for example, an inappropriate email may be taken to shed light on the way you really think. Even recipients who considered the email amusing at the time and thought nothing of it may look at it in a different way, months or even years later, in the light of subsequent events. The employee in question will usually explain that "It was just a bit of fun", or "it was said in a light-hearted way", but the comments invariably sound less amusing when they are being read out to a court.

Training

As employers can be held responsible for any discriminatory conduct by their employees, they would do well to ensure that their workforce is given regular training on how to avoid discrimination. This should include advice about the dangers of sending emails that might be said to display a discriminatory attitude.

Policies

Employers also need to ensure that they have an email policy, which is kept up to date. This should warn employees against using their work email to say anything that could bring the organisation into disrepute, and might constitute not only discrimination but also:

- bullying and harassment
- breach of a confidentiality or fidelity duty
- defamation
- breach of copyright or intellectual property rights.

To discourage time-wasting and consequent loss of productivity, an email policy also needs to set limits on the reasonable personal use that employees can make of the company's email system.

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