

Employers called out for ‘knee-jerk reactions’ to staff social media posts

After staff fired over Charlie Kirk comments, lawyers say care is needed

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Published OCT 12 2025



A teacher in Massachusetts returned to work last week after being put on leave for their social media posts about the murder of political activist Charlie Kirk. The agreement followed “a thorough review of the details related to the alleged social media policy violation”, according to a joint statement by the school and the teacher’s union.

Kirk’s murder in September prompted a flare-up of tensions between employers and employees, with scores of workers — from airlines, schools and law firms — swiftly fired for posting views about the incident on social media. Prominent figures including Elon Musk and vice-president JD Vance amplified the pressure on employers to act. “When you see someone celebrating Charlie’s murder, call them out. And hell, call their employer,” said Vance.

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"We seem to be in an era of knee-jerk reactions — the pressure to react at pace rather than respond with thought means some organisations create even bigger reputational challenges for themselves when they have to explain or unpick unwise decisions," says Megan Reitz, associate fellow at Oxford university's Saïd Business School. "In the rush to show action, they can also seem to be capricious."

Michelle Arbitrio, managing partner of Wood Smith Henning & Berman, a US law firm, says "recent events" have led to an increase in the number of enquiries from clients concerned about staff social media posts. "The sheer speed with which a post can spread — and the fact that a single employee's viewpoint can suddenly be read as the company's viewpoint — creates real reputational risk." Navigating this, while staff feel they have a "right to voice their personal beliefs" on tech platforms, is difficult, she adds.

Some staff were reportedly fired for private posts visible only to friends and family — though these can be screenshotted and shared widely. While the First Amendment in the US protects free speech, it does not prevent private employers from taking action. "People believe that because it's done on their own time, potentially in a private setting, that is OK," says Johnny Taylor, president of the Society for Human Resource Management, the professional body. "It's OK for the person to do it, but it is, at the same time, OK for the company [to] discipline. Companies have a right to say, 'This is what we stand for.'"

One employee, who was dismissed for a post and asked to remain anonymous, says the climate was "fear-driven" and led not only to their dismissal but also to doxxing — sharing personal information such as an address. "I was scared for my safety and my family." Employers are "struggling with drawing the lines", failing to make a distinction between those "opposing violence and celebrating it. Not all social posts are created equal."

Taylor says the online reaction to Kirk's killing felt "quite intense" but was a "very recognisable" problem. He points to past social media campaigns to oust staff from their jobs because of posts they made that were perceived to be racist or sexist. Companies have also fired employees over views they posted about the Israel-Hamas conflict, for example.

In the wake of George Floyd's murder in 2020, many employers tightened their social media policies. "We've done this before. We've seen it repeatedly," adds Taylor.

Sarah Henchoz, global head of employment litigation at A&O Sherman, who is based in London, sees enquiries from clients about social media policy increase "whenever there is something that gains . . . traction, or where there can be two opposing views". Most recently this has been the case around Gaza and the UK Supreme Court's decision on the meaning of "female" under the Equality Act, she says.

Such policies are not only aimed at protecting employers' reputation but also workplace harmony. "The last thing we want is to have an environment where people are at each other's throats," says Taylor.

There are also implications for workers' reputations, says Amanda Rajkumar, who has held senior HR roles at JPMorgan Chase and BNP Paribas: "Free speech has to be exercised with good judgment, and this doesn't mean freedom from consequences. The deeper issue here is that when an employee writes such a post, assumptions will inevitably be made about the employee's broader judgment and critical thinking."

The recent wave of dismissals underlines the importance of regularly reminding staff of their obligations regarding social media.

Reitz points out that "employers retrospectively telling employees they shouldn't have posted something . . . because it is against policy or values will need to be utterly sure that they have communicated said policy and values to all employees in an unambiguous manner".

Companies must also make sure any sanctions are fairly administered and that they react similarly in each crisis, she adds. "I am doubtful that all the organisations firing employees have adhered to both these aspects."

Arbitrio says the "challenge [is] whether [policies are] applied consistently. Inconsistent enforcement creates legal exposure and undermines employee trust." It also risks making discipline look political.

Typically, says Jacqueline Murphy, partner at WSHB, most dismissals over social media policies are not based on “a single stray post” but “a pattern of conduct”.

The legal situation is complicated. In the US, “there’s no federal law; there’s a patchwork of state laws. Then there are other laws [concerning] potentially harassing or threatening another group,” says Alexander Reich, a labour and employment lawyer at Saul Ewing. “Employers need to proceed with caution. That’s the biggest lesson.”

For employees, it is not sufficient to say they were speaking to an inner circle, because these posts can be passed on by screenshots to a broader audience. “You can limit who can see it. It can still offend someone,” Reich adds.

In the UK, Libby Payne, an employment partner at Withers, says employers need to consider a proportionate and objective response, even where there is a risk of reputational harm. Recent case law developments have, to some extent, limited employers’ ability to restrict their workers’ expression of certain beliefs, she says. “Historically, it was easier for employers to draw up hard and fast rules about what would be tolerated in the workplace . . . Now, employers have to . . . think about the proportionality of their approach.”

One recent case (Higgs versus Farmor’s School) found a school had wrongly sacked a Christian pastoral administrator for “homophobic and prejudiced views” expressed in Facebook posts because it discriminated against her protected religious beliefs. Her work had not been affected by her views, nor was the school’s reputation harmed.

In Australia, a reporter was found to have been unfairly dismissed by her employer for reposting a report by Human Rights Watch, accusing Israel of war crimes.

Payne advises “guidance . . . rather than policies” that allows employees to express themselves but helps them “understand the potential implications of any post”. She also suggests mapping out guidance for managers over problematic posts.

Anna Bond, employment partner at Lewis Silkin, says: “From the employees’ side, it’s always a good idea to make it clear when you are posting something in a purely personal capacity, and give careful thought to your audience.

“However, bear in mind that once something is out on the internet you can easily lose control of it, whatever your original intention might have been.”