

# Paradigm

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## Social Media and Hungarian Law

Social media has become an everyday factor in the lives of average people. Almost everybody has at least one account in various community pages (e.g.: Facebook, Twitter, LinkedIn, etc.). People are sharing photos, posting their opinions, making comments and “liking” each other’s posts all the time. These activities may show a lot of information about the user’s life, personality and workplace. Therefore, social media may affect the employment relationship in various ways.

We would like to highlight labor and data protection law in Hungary. Two main laws apply to this issue: Act I of 2012 on the Labor Code (referred to as “Labor Code”) and Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information (referred to as: “Information Act”).

### Labor Law Aspects

Legal disputes relating to social media usually revolve around the conflict

between employees’ right to express their opinions and the employer’s legitimate economic interests.

According to the Labor Code, during the life of the employment relationship, employees shall not engage in any conduct which jeopardizes the legitimate economic interests of the employer, unless so authorized by the relevant legislation. Employees may not engage in any conduct during or outside their paid working hours that, stemming from the worker’s job or position in the employer’s hierarchy, directly and factually has the potential to damage the employer’s reputation, legitimate economic interest or the intended purpose of the employment relationship.

Furthermore, the Labor Code sets a guideline pertaining to the confidentiality obligation of employees. According to the Labor Code, employees shall maintain confidentiality in relation to business secrets obtained in the course of their work. Moreover, employees shall

not disclose to unauthorized persons any data learned in connection with their activities that, if revealed, would result in detrimental consequences for their employer or other people. The requirement of confidentiality shall not apply to any information that is declared by specific other legislation to be treated as information of public interest or public information and as such is rendered subject to disclosure requirement.

An employee may be requested to make a statement or to disclose certain information only if it does not violate his personal rights, and if deemed necessary for the conclusion, fulfillment or termination of the employment relationship. An employee may be requested to take an aptitude test if one is prescribed by employment regulations, or if deemed necessary with a view to exercising rights and discharging obligations in accordance with employment regulations.

The Labor Code contains a provision which is related to the data protection law, as well. Employers shall inform their

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employees concerning the processing of their personal data. Employers shall be permitted to disclose facts, data and opinions concerning an employee to third persons only in the cases specified by law or upon the employees' consent.

In addition, the Labor Code sets forth that the employers shall be allowed to monitor the behavior of employees only to the extent pertaining to the employment relationship. The employers' actions of control, and the means and methods used, may not be at the expense of human dignity. The private life of employees may not be violated.

## Data Protection Law Aspects

When we examine the data protection law, first of all we must understand the key definitions:

According to the Information Act *personal data* shall mean any information relating to the data subject, in particular by reference to his name, an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity, and any reference drawn from such information pertaining to the data subject. *Special data* shall mean: personal data revealing racial origin or nationality, political opinions and any affiliation with political parties, religious or philosophical beliefs or trade-union membership, and personal data concerning sex life, or personal data concerning health, pathological addictions, or criminal record.

According to the Information Act, personal data may be processed only for specified and explicit purposes, where it is necessary for the implementation of certain rights or obligations. The purpose of processing must be satisfied in all stages of data processing operations; recording of personal data shall be done under the principle of lawfulness and fairness. The personal data processed must be essential for the purpose for

which it was recorded, and it must be suitable to achieve that purpose. Personal data may be processed to the extent and for the duration necessary to achieve its purpose.

Personal data may be processed under the following circumstances: when the data subject has given his consent, or when processing is necessary as decreed by law or by a local authority based on authorization conferred by law concerning specific data defined therein for the performance of a task carried out in the public interest. Special data may be processed when the data subject has given his consent in writing.

## The Practice in Hungary and Further Interesting Questions

There is no established judicial practice in Hungary on social media. Many questions have been raised that should be answered by the Hungarian courts in the near future.

- (i) It should be clarified how the term "expression of the employees' opinion" could be interpreted. It is a real question if the employee's "liking" something on social media can mean an expression of an opinion, or just if the employee gives an explicit textual statement.
- (ii) In the case of a job interview, if the employer checks the candidate's profile at a social page and refuses the application of the candidate because of certain personal information on the candidate's profile, then the candidate may turn to the Equal Treatment Authority or the competent Hungarian court. In this case the discrimination has to be proved by the candidate.
- (iii) Information, data and pictures from Facebook are frequently used as evidence before the Hungarian courts. According to the Hungarian law, the court shall ascertain the relevant facts of a case upon

weighing the arguments of the parties against the evidence. The court shall evaluate the evidence as a whole, and shall rule relying on its conviction. For example, in a lawsuit instituted against the employer for compensation because of long-term deterioration of health due to work accident, the employer proved the lack of deterioration of health with downloaded photos from Facebook. The enclosed photos showed that the employee had pursued sport activities after the accident.

- (iv) As a curiosity, the National Council of Justice (hereinafter referred to as "Council") announced a recommendation in 2011 for judicial workers (included judges) about how to avoid the risks associated with the using of online social networks. According to the recommendation, the social media may ensure the chance for criminal groups to legally acquire endangering information about judges and courts. Therefore, the Council recommends to judicial workers to avoid using these social networks sites.

The old saying, "The world have changed at a much faster rate than the law has," is true. Bearing in mind that the new Hungarian Labor Code came into effect on July 1, 2012, no established legal practice exists in this respect.

Therefore, social media policies have a very important role in the workplace. It is strongly recommended that every employer adopt a social media policy. These policies may contain the terms and conditions of using social networks and media at the workplace or even after working hours. These policies have to be followed by the employees, otherwise disciplinary measures may be applied by the employers. **P**