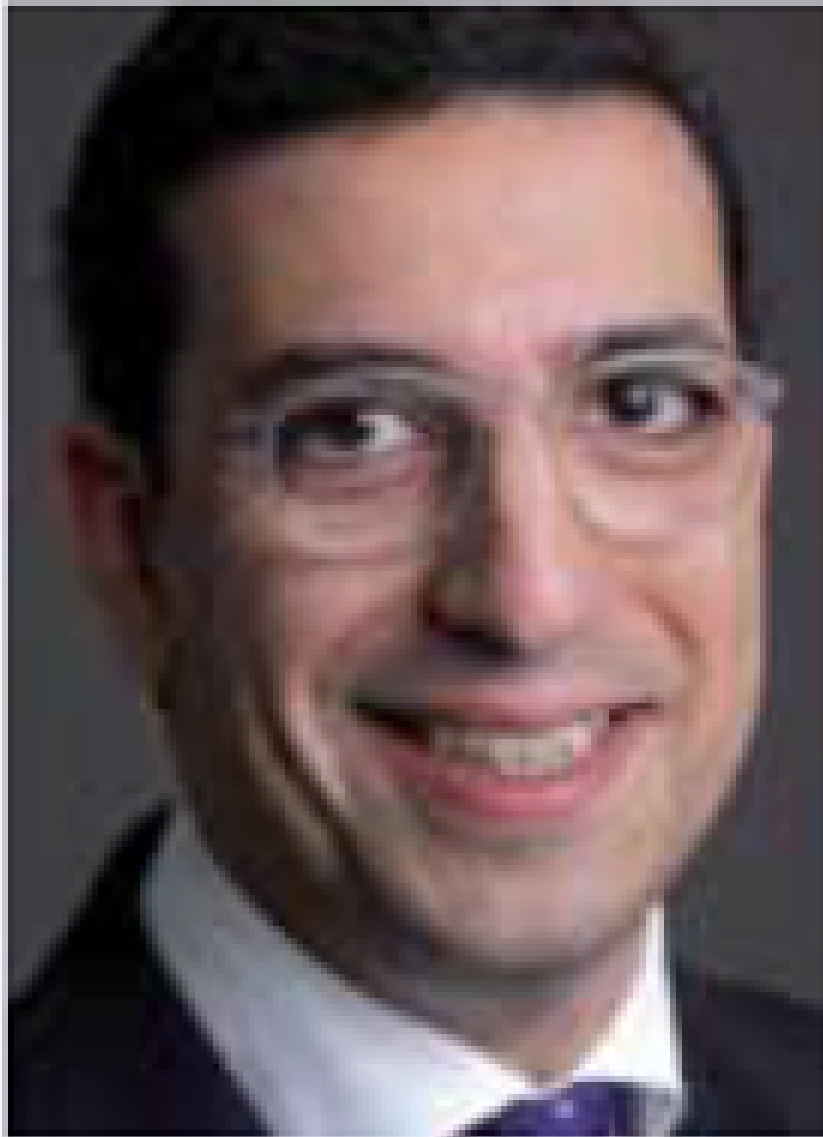
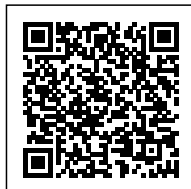


CASE LAW AFFECTING SOCIAL MEDIA AND PRIVACY - PBBR

Posted on 12/08/2015



Category: [Employment](#)



Employment-related issues concerning social media have finally been brought to Portuguese courts' attention - three decisions of Appeal Courts on this topic were published during the year 2014, and it is expected that more decisions will follow.

The common thread in these decisions was the dismissal of employees with cause – the courts

were unanimous (although on different grounds) on the lawfulness of the dismissals carried out by the employers. The facts were as follows: three employees were dismissed after their respective employers discovered that Facebook was used to publish several messages that breached the employees' obligations towards the employer.

In one of the cases, an employee created a false profile using a different name, with a different picture. Using the profile, the employee sent several offensive and untrue messages to their superiors.

The court considered that the creation of a false profile aggravated the behavior of the employee concerned, which was serious enough to justify the dismissal by itself. In another case, an employee posted several messages on their personal Facebook timeline, which were discovered by their employer through an employee's "friend" page. Such messages were also offensive to the name and image of the employer.

According to the court, the concept of "Facebook friends" includes not only close, but also remote friends, mere known people or even persons who are not personally known to the individual. Through a "friend", the post may be known by their "friends", be printed or kept online for an undetermined period of time.

The court assessed the concept of "private" vis-à-vis "public" messages. Given the fact that the employee concerned encouraged their friends to share the messages posted, according to the court, they could not argue that the message was private since they were aware that it could be sent to third parties or shared on other Facebook pages. As a result, the employee could not expect to have a legitimate privacy entitlement.

Finally, in the third situation the court analysed the issue of "private groups" within Facebook. The employee concerned was the administrator of a 140-member group. The group members were employees or former employees of a given company.

According to the court, the employee cannot reasonably expect to benefit from privacy protection when (i) posts were related to professional topics, (ii) there were a large number of members within the group and (iii) the relation between them was not sufficiently close.

In addition, privacy protection applicable to e-mail messages cannot be transposed to Facebook posts notably since the latter may be easily shared by third-parties without the control of the administrator of the group.

The basic idea from those rulings is that, regardless of the means, breach of the employment rules could effectively lead to the termination of the employment contract. Even if employees allege that groups were private, or consent to become a member was required, the broad nature of social media and the trouble-free transmission of information may supersede privacy expectations.

The aforementioned decisions may constitute an important milestone concerning the consequences of social media use in the context of employment relations in a country like Portugal where employees' privacy entitlement is generally overprotected. Employees should be aware that information posted on the internet can be easily discovered by their employers, even without great effort.

Bruno Barbosa is a partner at Pbbr. He can be contacted at bruno.barbosa@pbbr.pt