

LEGAL CORNER

LEGAL CORNER: WATCH WHAT YOU POST! - Social Media and the Workplace

Written by Catherine Willson, www.truelawlegal.ca

People today, especially younger generations, like to live out loud on social media. Through Instagram, Twitter/X, Facebook, and a hundred new applications, people's personal lives are going public. While it may seem like a good idea at the time, personal information, once posted online, gains permanence and can be circulated and searched by others, even years later.

Employees should know that employers and recruiters often search a candidate's social media profile before hiring decisions are made. In addition, subject to existing workplace policies, some employers monitor their employees' social media presence. When using social media in a workplace context, employees' personal information may be collected, used, and disclosed by the employer. In addition, co-workers, company competitors, and clients may find an employee's social media postings and take offense or use the information to damage the company.

While employers cannot generally control employees' off-duty social media conduct, where the posting has a connection to the employer or the nature of the employment, harms the employer's reputation or brand, renders the employee unable to perform their duties, or creates a toxic or unsafe work environment for co-workers, the employer may be justified in disciplining or terminating the employee.

Freedom of expression is more limited in a workplace environment and depending on the policies of the employer, expressions of political statements or support for different social causes, could be cause for disciplinary measures. Employers should be familiar with the *Human Rights Code* preventing discrimination against individuals based on several protected grounds, including race, faith, gender, etc., and take care not to judge posts that express sentiments under protected grounds.

Employers must have a social media policy in place that is clear, balanced, and consistently enforced. The policy should inform employees of the expectations of the employer regarding acceptable social media use, set out the consequences of misuse, and address workplace privacy and confidentiality issues. The employer should also indicate whether it monitors social media sites and what social media use is permissible in the workplace.

Workplace investigations regarding employees' misuse of social media should review the full circumstances of the post including how it came to the attention of others (by invite or public), the nature of the post (generic comment v. harassment for example), and its impact on the company, co-workers, and others.

Employees should be familiar with their company's social media, privacy, and confidentiality policies and think carefully before posting and how those posts will be perceived by others and into the future

as they continue their careers. Do not post sensitive or confidential information about an employer or co-workers. Check your privacy settings and take control of who sees your posts.

True Law (www.truelawlegal.ca) is a law firm in Toronto, Ontario. *This article contains general information only, based on the laws of Ontario and is not intended to provide a legal opinion or advice. Readers should consult a lawyer with respect to the application of the information contained above to their particular circumstances. Readers may also contact True Law at info@truelaw.legal with any questions.*