



HUMAN RESOURCES
LAW AND ADVOCACY



EMPLOYEE DISCIPLINE FOR OFF-DUTY SOCIAL MEDIA COMMENTS

Employee conduct on social media can have a profound effect in the workplace. However, most social media activity – whether it be on Twitter, Facebook, Instagram, blogs, texts or email – occurs outside the physical workplace.

This toolkit provides employers with an overview of key considerations when imposing discipline for an employee's online activity, including when discipline may be imposed, what disciplinary response is appropriate and tips on how to draft an effective social media policy.

WHEN CAN DISCIPLINE BE IMPOSED FOR SOCIAL MEDIA MISCONDUCT?

Discipline for social media activities may be imposed in a wide variety of circumstances, including:

- Where the conduct interferes with the Company's duty to other employees, including its duty to provide a safe and harassment-free workplace
- Where the conduct interferes with the employee's job duties. For example, a teacher must be a model of tolerance and respect in the classroom. Intolerant public expression may conflict with that duty
- Where the conduct causes harm to reputation, such as negative or defamatory comments about the Company and/or its operations

Examples of social media activities that may give rise to discipline include:

- Breaches of employee or customer privacy
- Misuse or disclosure of confidential or proprietary business information
- *Criminal Code* offences, such as the dissemination of pornography
- Breaches of the *Human Rights Code*, including discrimination or harassment
- Breaches of the *Occupational Health and Safety Act* relating to workplace violence or harassment
- Defamation
- Excessive social media use during working hours

WHAT DISCIPLINE SHOULD BE IMPOSED FOR SOCIAL MEDIA MISCONDUCT?

As in all cases of discipline, the employer must determine what penalty (if any) is appropriate in the circumstances. The following is a non-exhaustive list of factors to consider when imposing discipline for off-duty social media comments:

- Is the employer/another employee identifiable?
- Do the comments cause actual damage, or can damage be presumed?
- Was the misconduct repeated or a single incident?
- Was the misconduct particularly egregious? For example, did the employee commit acts of violence and/or harassment against a colleague?

Mitigating Factors

- The employer has no policies in place regarding social media use, or those policies are not communicated to employees
- The employee has no prior discipline on record
- The employer has not consistently enforced applicable policies
- The employee demonstrates honesty and remorse during the investigation

Aggravating Factors

- The employee's position requires a heightened degree of public trust and/or professionalism:
 - Teacher, public servant, firefighters, etc.
 - Employees dealing with vulnerable persons
 - Employees with fiduciary obligations
- Prior discipline for similar conduct

WORKPLACE POLICIES

The most effective way to regulate social media misconduct is to adopt policies that govern social media use while employees are both on and off-duty, and ensure that these policies are effectively communicated to all employees. As a good first step, assess the following:

- Does the Company have an "acceptable use" policy for computers/software?
 - Does it address and define social media?
 - Does it govern off-duty social media use?
 - Does the policy permit the employer to monitor employees' online activity – and to what extent?
- Does the Company have a human rights policy that addresses human rights violations on social media or through other electronic media?
- Does the Company have a health and safety policy that addresses off-duty discrimination and harassment?
- Is there a Code of Conduct in place that addresses interpersonal or professional behaviour expectations?