CAN YOU FIRE SOMEONE FOR THEIR FACEBOOK / TWITTER POSTS??

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written by Mathando Likhanya | May 1, 2013

South Africa's Commission for Conciliation, Mediation and Arbitration ("**CCMA**"**)** has accepted in recent cases that employees may be dismissed for posting false, derogatory remarks about their employers or employers clients on Facebook, Twitter or other social networks or blogs, as these posts might harm the ongoing employment relationship, bring the employers name into disrepute and may equate to a form of misconduct.

There have been recent CCMA cases where certain employees have been dismissed for social media misconduct as it is commonly known. Cases such as Sedick & another / Krisray (Pty) Ltd [2011] 8 BALR 879 (CCMA); Fredericks / Jo Barkett Fashions [2012] 1 BALR 28 (CCMA; Media Workers Association of SA obo Mvemve v Kathorus Community Radio (2010) 31 ILJ 2217 (CCMA) are examples of where the cause of the dismissal / disciplinary sanction has been related to social media misconduct. These are just some of the instances where one's social media conduct can get them into hot water with their employer.

Examples of post that may constitute social media misconduct

Facebook post:

"*…aaaarg, Mr Zandoo has no idea how to run his company, I mean he is a joke, and I don't think his clients are legally obtained. Everything about him is just so corrupt. Just sayin…"*

Employees should also take cognisance of the type of position they occupy, case in point – Hawks spokesperson McIntosh Polela who got suspended after making a controversial reference to prison rape on Twitter.

So what is the solution to this?

A social media policy would probably be the best bet for both the employer and employees. A social media policy is a code of conduct which regulates the manner in which people who post content on the internet should do so. It outlines appropriate and acceptable behaviour and also sets out risks and penalties of not abiding by the policy.

In the event that employees in a company have guidelines as to how they should conduct themselves, the types of things they can and cannot say, receive adequate training on the use of social media platforms, whether it is in their private capacity in the course and scope of their employment.

The importance of the social media policy should be emphasised and employees should be made aware of the consequences of not adhering to the policy. Employees should be made aware of risks such as vicarious liability, in the event that they are acting on behalf of their employers, copyright and trademark infringements etc.[1]

Concluding remarks

A social media policy should give a guideline as to how employees should make use social media platforms in the best manner. What you say on social medial platforms may equate to a fair reason for dismissal, so one should be careful when posting on Facebook walls, twitter handles etc. or you might end up without a job.

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[1] http://www.saflii.org/za/journals/DEREBUS/2012/80.html