



Municipal employers should be cautious about the content they are posting and of the message they are sending to their employees and the general public.
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Respectful work environments in the evolving digital age

Obligations and considerations for municipal employers

by André Nowakowski

Technology is pervasive in our daily lives. The use of technological devices and social media platforms has become an integral part of both our personal lives and the way workplaces function.

Social media can be an important tool in the municipal workplace for communicating internally, with clients, business partners, and with the general public. For example, LinkedIn provides a way to build and foster professional networking. X (formerly known as Twitter) provides a tool to directly engage with the community. Instagram

provides a pathway to reach a broader audience and promote the work of an organization.

Although the prevalence of social media in our lives is no longer novel, it is constantly evolving in its use and form. New platforms for content creation and alternate forms of monetization are becoming widespread.

The speed at which information is disseminated means that employers must be careful and aware of the content of the messages they relay and how they are being spread. The same

is true for social media spread by their employees.

Employer Social Media Use and Their Obligations under the Law

Municipal employers should be cautious about the content they are posting and be aware of the message they are sending to their employees and the general public. Although the municipal employer and employee owe a duty of impartiality in their behaviour, particularly politically, the employer should also be cognizant of their other legal obligations.



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Employees hold a diversity of opinions, beliefs, backgrounds, and experiences, any of which can fall under a protected ground under human rights legislation such as race, creed/religion, disability, age, sex, and gender identity. Internal or external social media posts that infringe a protected ground under the legislation could lead to a finding of discrimination and/or harassment on the part of the employer.

Employers should also be cognizant of their obligations under occupational health and safety legislation to provide a safe workplace, which may contain requirements to maintain workplace violence and/or harassment policies. The municipal employer should ensure that when posting information, they are careful to ensure they are not knowingly or unknowingly making any employee feel unsafe.

An additional consideration for the municipal employer is the fact that they are governed by the *Canadian Charter of Rights and Freedoms*. The charter indirectly provides employers with the obligation to create a safe work environment and overlaps in some respects with human rights legislation.

This means that although freedom of expression is protected, employers need to be cautious about the potential of harmful views being espoused. Employers should ensure that while respectful dialogue is allowed, they are cognizant of the impact on employees.

Although internal and external use of digital and social media can play an important role in creating an inclusive environment, it can also have the opposite effect. Workplaces should not be places where individuals feel targeted, victimized, or uncomfortable.

Employer Obligations with Respect to Employee Social Media Use

In addition to creating a safe work environment through their own actions, employers should also ensure employees

are not subject to discrimination or harassment by others, including their co-workers, in the workplace. Social media is another medium by which such discrimination or harassment can occur.

In this interconnected world, employees can be exposed to social media from their colleagues. Employers need to think about employee conduct and the environment that is being fostered.

Take the modern “influencer” who posts about many aspects of their lives on a public account as an example. For such individuals, their social media account can be seen as representative of their life, including their identity as an employee of the municipal employer’s workplace. Sometimes these individuals are paid or otherwise incentivized to promote certain brands and products as a result of their platform. Questions regarding privacy and conflicts of interest can arise, and employers should ensure that their social media policies are robust enough to account for such situations.

There are a multitude of considerations regarding the personal social media use of employees that may have a workplace impact. For instance, if an employer is providing devices for employee use, the employer should ensure that they have written social media policies that are clear as to what personal social media use, if any, will be permitted on such devices.

Privacy breaches may expose the employer to liability, either under legislation in some jurisdictions or potentially by the courts as case law evolves.

Employers should be sure that social media applications do not have access to confidential information and that employees are not inadvertently disseminating such information.

Can an Employee be Disciplined for “Off-Duty” Social Media Activity?

Depending on the context, employers may be in a position to discipline an employee for inappropriate use of their own personal social media accounts. While there is no clear and defined line

that can result in discipline, the following factors can create support for the discipline of an employee:

- whether there is some nexus to the employee's employer or position
- whether the employee's behaviour harms the employer's reputation or ability to operate their business
- whether the employee's conduct renders them unable to perform their duties satisfactorily
- whether the employee's conduct results in a refusal, reluctance, or inability of other employees to work with them
- whether the employee's conduct can be characterized as criminal or contrary to other legislation and injures the employer and/or its employees
- whether the conduct makes it difficult for the employer to carry out its

function of managing their business and efficiently directing its working forces

As is evident from the above factors, there must be a nexus between the employee's actions and the employment relationship. It is likely clear to most that having a conversation that can be classified as "hate speech" in the halls of the office probably would be subject to discipline, but discipline may also be warranted for such behaviour on social media.

For example, posts or comments on a "private" social media account about workplace parties or issues where co-workers are "friends" or "followers" who can see the content can be sufficient to establish a nexus to the workplace and can warrant discipline. Where there are grounds for discipline, the level of

discipline will depend on the circumstances. As always, discipline should be proportional to the misconduct.

Municipal employers should ensure that their technology and social media policies are robust and comprehensive. They should be reviewed regularly to ensure that they are modified where necessary to adapt to this ever-evolving area. These policies and related practices are important tools in creating workplaces that are safe and accessible to all, fostering dialogue and connection rather than harm.



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