

Social Media And The Workplace: Legal Implications Of Employee Posts For Employers



In today's hyper-connected world, employees often use social media to promote their businesses, engage with clients, and network with peers. While social media can be a powerful marketing tool, it also presents potential legal risks for both employees and their employers, particularly when posts cross into defamatory territory. The Ontario Superior Court of Justice's recent [endorsement](#) highlights how these risks can play out in a professional setting.

In the case, the plaintiff, a Toronto-based real estate agent, alleged that fellow agents defamed her through social media posts. All three agents were active in promoting their respective brokerages online, using various social media platforms to market themselves and their companies. The plaintiff alleged that the other agents' posts and public statements damaged her professional reputation.

Significantly, the plaintiff also brought claims against the brokers of record and managers at the respective brokerages for negligence, alleging they failed to maintain professional standards and address her complaints. In dismissing the defendants' motions to strike the claims in the newly amended statement of claim on the grounds of no cause of action, the court found that there was a sufficient basis for the negligence and vicarious liability claims to proceed. The court however found that punitive damages in respect of vicarious liability against the brokerages themselves were not viable.

Employers can potentially be held responsible for employees' social media activity if:

1. The employees are acting within the scope of their employment;
2. The employer has created, controlled, or materially contributed to the risk of harm; and
3. The employer fails to take reasonable steps to prevent foreseeable harm.

The court emphasized that when employees use social media as part of their commercial activities for an employer, the employer may owe a duty of care to third parties who could be harmed by the employee's posts.

Key Takeaways for Employers

This is a reminder for employers to actively manage the risks associated with their employees' social media activity. Here are some practical steps:

1. Develop a clear social media policy – Clearly outline expectations for professional conduct online, including what constitutes defamatory or harmful content. Ensure that all employees are aware that their online conduct may have legal implications for both themselves and the organization.
2. Train and educate employees – Provide regular training on online conduct, including defamation, harassment, and confidentiality. Make sure to train employees on scenarios where social media use could intersect with professional responsibilities.
3. Implement reporting and response procedures – Not only is it essential to establish clear procedures for employees or third parties to report harmful social media content, but employers also have to respond promptly to complaints to minimize ongoing harm and demonstrate due diligence.
4. Monitor social media activity – While respecting privacy, employers should monitor public posts related to their brand or commercial activity. Early detection of potential issues allows for swift intervention.
5. Include social media clauses in employment agreements – Employer who rely on social media to market their services should consider incorporating clauses that clarify employees' responsibilities regarding online conduct and the consequences for breaching these responsibilities.
6. Take reasonable remedial actions – When problematic content arises, act promptly! Require the removal of defamatory content, address the conduct internally, and take steps to prevent recurrence. Failure to act can expose the employer to claims of negligence or vicarious liability.

Conclusion

The digital age blurs the line between personal expression and professional responsibility. When employees use social media to advance business objectives, employers must be proactive in creating policies, monitoring activity, and addressing harmful posts to mitigate legal risk. Staying ahead of these issues not only protects the company legally but also safeguards workplace relationships and professional reputations.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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