

Unlike' – Social Media Gaffes Not Cause To Dismiss Communications Manager



Lack of Warnings about inappropriate online posts was fatal to employer's case

As more people use social media to communicate in and out of the office, social media posts by employees are increasingly a concern for employers. In a recent case, the International Triathlon Union (“ITU”) dismissed its Senior Manager of Communications, Paula Kim, because of negative posts she made on her personal blog and social media accounts. In *Kim v. International Triathlon Union*, the British Columbia Supreme Court found there was no just cause for her dismissal because she had not been clearly warned that her communications put her employment in jeopardy.

Ms. Kim was considered the “voice of ITU”. She was responsible for liaising with the media and writing materials for ITU’s website, press releases, newsletter and Facebook account. Ms. Kim also kept a personal blog where she posted about her life, and had two Twitter accounts, one personal and one with the handle “Paula Kim ITU” where she posted about triathlon matters. ITU did not have any social media, communication or internet policies or a written contract with Ms. Kim, but Ms. Kim later stopped using the “Paula Kim ITU” account when requested by ITU.

Ms. Kim’s employment was terminated after she made a series of tweets on her personal Twitter account and wrote a blog post about her manager. Ms. Kim posted several tweets after an ITU-related event, including:

- “I wonder if other IF congresses have as much propaganda as ours...” and
- “surprisingly fun congress after-party last night. probly [sic] only time I’ll see so many Eboard members hungover & lamenting those tequila shots”.

She also wrote a series of tweets during a triathlon event in which she publicly

supported some athletes over others, such as:

- “will prob get in trouble for this but i dont care; team tactics failed. the 6 medallists were on podium.” [sic] and
- “all that talk about brownlees intentionally trying for gold all seems a bit arrogant now...because Gomez was solid in silver position”.

The latter tweets resulted in a formal complaint to the ITU by the Chief Executive of the British Triathlon. Other members of the international triathlon community also wrote complaints about Ms. Kim’s unprofessional behaviour and communications. The last straw was a post Ms. Kim made on her personal blog, in which she compared a workplace disagreement with her manager about her annual vacation to abuse she had suffered as a child.

The ITU did not speak with Ms. Kim about the tweets, complaints or blog post. But, shortly after these events, Ms. Kim’s employment was terminated. She was told at the time that she was being dismissed because her communication style was not in line with ITU. However, the ITU later alleged that it had just cause to dismiss Ms. Kim because of her unprofessional and insubordinate social media and blog posts.

The court disagreed. The court found that, even though Ms. Kim was an experienced communications professional, ITU could not establish just cause because it had not given Ms. Kim any clear warnings that her communications were putting her employment in jeopardy. To the contrary, the court noted that Ms. Kim had received mixed messages from the ITU, including an increase in her salary and continuing in her position, even after the controversial posts. The Court said (at para. 221):

...even had I found that the social media posts amounted to an accumulation of misconduct and that the October 5th blog was the tipping point supporting the plaintiff’s termination for cause, I find that ITU cannot rely upon cumulative cause as a ground for the plaintiff’s termination because ITU did not give the plaintiff an “express and clear” warning about her performance relating to the social media posts, and a reasonable opportunity to improve her performance after warning her.

In the absence of just cause for her dismissal, the court awarded Ms. Kim five months’ pay in lieu of notice as damages.

In our view, the lessons for employers from this case are clear:

1. **Communicate your expectations.** Employers should ensure that all employees – even those who ‘should know better’ – understand what is expected of them. This can be done effectively through written policies, such as a social media or similar policy or employee handbook, provisions in the employee’s contract, or through other types of communication and training. If employers do not clearly communicate their expectations for employees’ conduct, especially when such conduct occurs outside of work (such as on personal social media or blogs), it will be more difficult to establish just cause when employees do not meet those expectations.
2. **Do not ignore a performance problem.** If an employer has concerns or receives complaints about an employee’s performance, the employer should address them directly and promptly with the employee, investigate as necessary to find the facts, and, if appropriate, issue clear warnings when

an employee's performance is unacceptable and may lead to his/her termination. You can read more about dismissing an employee for poor performance in our previous post [here](#).

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