

LIGITIMATE INVISIBLE DISCRIMINATION

I had an interesting client with a client the other day. It turns out that an employee had posted some statements on facebook that were perceived negatively by him and apparently by some of their clients who had mentioned the post. In the large scheme of

things it was not the worst of postings, but I could see how it could be misconstrued.

This brought to mind other instances where people's personal posts on social media had had an impact on their jobs or at least their earning ability. Last year South Africa was agog with the Penny Sparrow debacle. For those who have forgotten, Ms Sparrow made a disparaging remark about Black people being monkeys - cute monkeys - to give credit. This was not well received. Penny made this comment on her own personal facebook page, to her facebook "friends" but the comment inevitably hit the public and she lost her job. Her employers not only distanced themselves from Sparrow, but they were seeking legal counsel on what to do about this.

Another example is that of economist Chris Hart who lost his job at Standard bank over a racist tweet he made. Again the employing organisation distanced themselves from the individual. There are other examples that can be cited of course, such as the employee who took a picture of the bill and the tip she received from a diner. She thought she had been under tipped – she shared the news with "friends" and lost her job the next day.

There are many incidents that have wrought chaos in the workplace due to social media activity. Private Social Media activity for that matter

Many recruiters and prospective employers visit people's social media pages to find out more about them, and what they find can make the difference between a job offer and a polite turn down. It seems unfair that a person can be judged on the basis of how they run their lives for a position that has nothing to do with that. But it is done. It is a form of invisible discrimination even. And unfortunately for the candidate under judgement, there is no practicable way of addressing this. For the prospective employer, however, it is a sigh of relief in that they were able to learn about a candidate before they could employ them.

But, what about when an individual is already an employee, does the company have a right to demand that individuals carry themselves with care in their private lives? Can the company demand that an employee maintain a social media presence that is in keeping with the moral code of the company? Of course they can. It can actually be a policy that the organisation has for its employees. However the policy must be realistic. It must also be necessary. Setting unreasonable demands on employees mean that the policy will end up being ineffectual. It is understandable that a Social Media Usage Policy for Blue Cross will demand that employees not post pictures of themselves using alcohol, but it would not be expected in a policy for staff working anywhere else. (Unless drinking got them to do irresponsible things)

There are also things that should not be shared on social media with "friends" about the company. Stating anything that is negative about your employer or your colleagues is not

recommended. Even if it just a complaint like “Once again she just passed my office door, it’s the 5th time today – She just can’t stay away from him” – She knows who She is, and who Him is. Maybe Him’s wife also knows who She is. Do you want to get caught up in that – really? How many marriages have we heard of that have been destroyed this way.

Another one. “How are we expected to sell these when we know they are so %*&^* up” Yes it’s your page and your “friends” you are seeking commiseration from. But they are also the company’s potential customers, or the customers’ friends and relatives. You are literally acting in a manner that will have negative impact on the employers name and reputation!

All through I have put “friends” in parenthesis – It is because comments can never be limited to your friends only. Penny Sparrow certainly wasn’t writing that message for Julius Malema – but received it read it and made a big fuss over it.

For my client, I advised that we draw up a policy for them that deals with what the company expects of employees in terms of social media activity.

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