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## Workers' tweets could spell trouble for employer

*Policy, training can reduce liability*  
By Amanda Silliker

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Damian Goddard was fired from his position as host of Rogers Sportsnet in early May after comments he made on his Twitter account. He tweeted in support of hockey agent Todd Reynolds who said an NHL player's decision to film a commercial in support of gay marriage was "very sad" and "wrong."

Goddard said he "wholeheartedly" supported Reynolds and his stance on the "traditional and true meaning of marriage."

While Goddard paid the price in this situation, if the post had been defamatory and the recipient wanted to take action, the employer could have potentially been on the hook for damages. If an employee posts a defamatory comment online while at work or from a work asset, such as a laptop or smartphone, the employer can face liability, said Michael Smith, a partner at Borden Ladner Gervais law firm in Toronto.

"If the employee was using a work-supplied PDA when they posted the comment, then the employer may be considered by the courts to be the publisher of the defamatory comments simply because they supplied the infrastructure," he said.

A comment could be considered defamatory if it tarnishes the reputation or image of another person, business or product. The employer can still be liable even if the comment is a personal one posted on an individual's personal social media page.

"Regardless of whether it relates to business or not, the employer can still be liable," said Smith. "But the more the comments tend toward being work-related, the more exposed the employer is to liability."

Defamation cases surrounding social media are popping up more often, he said.

In March, rock star Courtney Love settled out of court for US\$430,000 for posting negative comments on Twitter about a fashion designer she worked with. In April, British politician Colin Elsbury had to pay the legal fees and £3,000 (about C\$4,700) in damages to a political opponent after posting false information about him on Twitter.

"I suspect there's a fair number of lawsuits commenced (in Canada) but, across the country, about 98 to 99 per cent of civil litigation settles before trial, so there probably has been a number of these lawsuits we will not hear about because they are settled quickly and privately," said Smith.

It is likely the majority of employers, especially small to medium-sized companies, are unaware of these risks and aren't giving much thought to the potential liability, said Cissy Pau, principal consultant at Clear HR Consulting in Vancouver. But it is something they should be conscience of given all the potential negative consequences, she said.

Aside from the obvious monetary costs, an employer's reputation is also on the line in these types of cases, said Pau.

"Information travels so quickly and if an employer is perceived as doing something inappropriate, that is going to splash across the Internet in a flash," she said. "It could tarnish your corporate image as an employer and hamper your ability to attract staff."

It's likely it will negatively impact the customer side of the business as well, especially if the comment violated confidentiality agreements or was discriminatory or harassing, said Pau.

Productivity and morale can also take a hit when an organization is dealing with a lawsuit such as this, said Murray Murphy, a partner at Stewart McKelvey law firm in Charlottetown.

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"If you have employees using this technology not for the correct purpose, that has an effect on the workplace and the other employees who are shouldering more of the work burden," he said. "It also has an impact on workplace attitude and peace of mind."

To reduce the risk of liability, employers should establish a policy for social media outlining the expectations of and appropriate use by employees, including personal accounts on work-provided assets, said Murphy.

The policy should be communicated clearly to employees through staff meetings and training sessions, said Pau.

"Ten years ago, employers had fashion shows with outfits to explain business casual," she said. "I relay that back now to social media — the technology is changing so quickly and the younger workers who grew up with Facebook may not have had much work and they need to be shown what they can and cannot do."

During these training sessions, employees should be encouraged to pause and reflect before they post anything online, said Smith.

"I'm sure we are all guilty of hotheaded emails but we should never be writing anything unless we wouldn't be concerned about it appearing on the front page (of a newspaper)," he said.

It's also a good idea for an organization to have a team of reviewers to act as a second set of eyes for anything posted through a business' social media accounts, said Smith. And only a handful of people, such as those in the communications department, should have access to the login information for a company's social media pages, he said.

If an employer takes these steps, it will be on the right track to sidestepping a lawsuit on social media, said Murphy.

"More and more people use social media and it's not only easy to post but it's easily accessible and hard to get rid of stuff as well," he said. "We have already seen more litigation involving social media and that trend is going to continue."

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