

Fired through Facebook

Trend to replace face-to-face terminations raises legal, taste issues

BY JANICE TIBBETTS, CANWEST NEWS SERVICE JANUARY 5, 2009

When Kelowna esthetician Crystal Bell was fired via Facebook, she spawned a debate over "cyber sacking" and what employers owe their employees in times when electronic communication has become the norm.

"I think it's going to be the way of the future, but for me it's not the human way to go," said Bell, a single mother who found out she was canned when she checked her Facebook e-mail one morning in November as she was getting ready for work.

"I think using any kind of texting or e-mailing to let people go is the coward's way out."

The former spa worker, who concedes that she was also hired via Facebook, had only been on the job two weeks when she was let go with an electronic pink slip after failing to show up at a meeting on her day off.

"I still got dressed and went into work that day because I thought she was kidding," said Bell, who received word of her firing via her private Facebook inbox, so it was not available online for all her friends to see.

The termination sparked a bit of a stir online, with employment lawyers and a human resources experts blogging about whether cyber sackings are merely the modern equivalent of a letter of termination. Are they just tacky, or do they also raise questions about the legal ins and outs of letting employees go?

In the U.S., Radio Shack sparked an uproar online and in newspaper editorials when the electronics company notified 400 employees by e-mail two years ago that they were being dismissed.

"There are both legalistic and humanistic reasons to not be resorting to e-mail or other electronic forms of communication to terminate employment," said Robert Smithson, a Vancouver labour lawyer.

"A prudent employer would say this might not be the most friendly, sympathetic manner so we're going to avoid that."

The Supreme Court of Canada, in a 1997 ruling known as the Wallace decision, set out how firing, if done in a cavalier way, can result in "bad faith" damages awards, in addition to normal severance pay. But the ruling does not contemplate the prospect of firing by electronic means.

Bell acknowledges that she was unreachable on the night of the missed staff meeting because she

was at the hospital with her sick mother. She had no minutes left on her cellphone and her voice mailbox on her home phone was full.

Bell said she contacted a lawyer about the prospect of damages, but he told her she was out of luck because she had worked at the spa for only two weeks.

Her former boss, Susanne Woerhie, defended the Facebook firing by saying that she had tried to call Bell after she skipped the staff meeting but couldn't reach her.

"I just wanted to have it dealt with that evening," Woerhie told the Kelowna Daily Courier. "I didn't want to deal with it at the shop when other people were around."

There are not believed to be any Canadian figures on how often employers use e-mail to terminate employment.

But the San Francisco-based International Association of Business Communicators, which informally surveyed 500 members after the Radio Shack fallout, reported that 29 per cent said they delivered bad news via e-mail, including layoff notices, according to an article in the Christian Science Monitor.

Ruth Haag, author of the book *Hiring and Firing*, said she fears for the future if cyber sacking becomes commonplace and bosses start routinely replacing face-to-face terminations.

"It's very hard to fire people so when supervisors have to fire someone they find the quickest and easiest way to do it," Haag said in an interview from Sandusky, Ohio.

"Doing an e-mail is quickest and easiest but people forget it is the most public way to communicate because it can be around the world in minutes and you're looking like a jerk for firing someone that way," she said. "It's more public than standing on a street corner and announcing it."

Smithson notes that a potential complication if a fired employee seeks damages is that e-mail is not considered to be private or secure. Messages are sent via company servers that can be retrieved by others. Also, messages are stored on systems that can be saved for years.

"Keep in mind the [e-mail] might contain allegations of misconduct which may later be proven to be untrue, so their disclosure could give rise to concerns on the defamation front," Smithson said.

Cissy Pau, a principal consultant with Vancouver-based Clear HR Consulting, said she found it unsettling that Bell was also hired via Facebook. But she added that it could be a "generational thing" that is more acceptable among younger employers and employees.

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