

MISCONDUCT AND SOCIAL MEDIA: WHAT SHOULD EMPLOYERS BE AWARE OF?

With the progression of technology and social media in the world today, and the consistent use of social media in our daily lives certain risks arise concerning what content a person chooses to share with the world on these social platforms.

Now the question arises what implications does this conduct have on Employers? In the case of **Juda Phonyogo Dagane v South African Police Services (2219/14) [2018]** it was discovered that an employee of the South African Police Services (SAPS) had posted comments of a racist nature on a social media platform. The issue that arises is that such racist conduct is not condoned by SAPS. The employee may argue that the comments were made on his private social media account and he had the right to make such comments in terms of his constitutional right to freedom of expression.

The employee however fails to realise that as he is associated with SAPS and should one view the employee's personal information on his social media account one can subsequently establish that the employee works for the SAPS. Therefore, the conduct committed by the employee is not in line with the code of conduct of the SAPS and therefore the employee is guilty of racist conduct.

While an employee does have the constitutional right to freedom of expression in terms of section 16 of the Constitution, this right is, however, limited in terms of section 36 of the Constitution which provides for the limitation of rights.

The section in question provides that any right in the Constitution, including the right to freedom of expression, may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

Employees should be cautious when posting any sort of material on social media as there may be grounds for disciplinary action, for example, the posting of derogatory statements or explicit material may tarnish the reputation of a Company. Employees who post messages concerning being treated unfairly at work on social media can be considered misconduct of bringing the Company name into disrepute as such conduct will damage the reputation of the Company which an employee is associated with.

There is a list of offences which can be committed in terms of what an employee submits on their social media platform, however, it is advised that Employers put in place a social media policy to prevent potential harm or loss to the business.

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