

EMPLOYMENT MATTERS

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CAN PERSONAL FACEBOOK POSTS BE DISCRIMINATORY IN THE EMPLOYMENT CONTEXT?

Short Answer

The short answer is **yes**. Making negative comments about a co-worker on your personal Facebook page can be held to be “discriminatory” and constitute a breach of the Ontario *Human Rights Code* (“**Code**”).

The Case

In [*Perez-Moreno v. Kulczycki*](#)^{*}, Mr. Perez-Moreno filed an Application with the Human Rights Tribunal of Ontario (“**Tribunal**”) when his co-worker, Ms. Kulczycki, posted derogatory remarks about Mr. Perez-Moreno’s Mexican heritage on her personal Facebook page. Specifically, she referred to him as a “dirty Mexican”.

During the hearing before the Tribunal, Mr. Perez-Moreno gave evidence that:

- the post was “humiliating and damaging to his character, work and personal life”;
- the post had created a “negative emotional, social, mental and possibly financial effect” on him; and
- the post had resulted in his son being asked by his classmates if the post referred to his dad.

In its decision, the Tribunal upheld the complaint and found that the Respondent’s statements and actions in communicating them on Facebook amounted to harassment in employment contrary to the *Code*. The Tribunal found that the comments were vexatious and related to an incident that had occurred in the workplace. The Respondent knew or ought reasonably to have known that her comments were unwelcome.

In the end result, the Tribunal ordered the Respondent to complete the Ontario Human Rights Commission’s online training “Human Rights 101”. In addition, the employer (who was not named in the Application) was encouraged to consider whether human rights training might benefit its workforce. Monetary compensation was not awarded because Mr. Perez-Moreno did not ask for monetary compensation.

What does this mean for Employers?

This decision confirms that the *Code* can apply to your employees’ social media conduct. To address this issue, employers are encouraged to ensure their staff members are trained on human rights issues and are encouraged to implement social media policies as part of their employee handbooks or other employment-related policies. Employers should also be mindful of the fact that they can be held vicariously liable for the conduct of their employees even when the employer is not directly engaged in the conduct at issue. Thus, implementation and enforcement of your policies are key to limiting your liability.

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