



Employers may be liable for third party harassment online

Many employers are aware of their duty to protect employees from discrimination and harassment in the workplace. A recent arbitration case in Ontario has extended that duty to protect against third-party discrimination and harassment directed at employees online.

Toronto Transit Commission and ATU, Local 113 (Use of Social Media), Re, involved the use of the TTC's Twitter account @TTCHelps, which was set up to receive and respond to customer service questions and concerns. The Union complained that @TTCHelps was providing a forum for the public to abuse TTC employees and produced as evidence a number of "tweets" that were, profane, abusive, racist, homophobic, threatening and discriminatory. The TTC's response to these inappropriate tweets was to advise the "tweeter" that it did not condone profane language and to refrain from personally attacking its employees.

The arbitrator found that the Twitter account constituted part of the workplace and that the TTC had failed to take all reasonable and practical measures to protect its employees from discrimination and harassment as prescribed by the Human Rights Code and the TTC's Workplace Harassment Policy. The arbitrator stated:

...To deter people from sending such tweets, @TTCHelps should not only indicate that the TTC does not condone abusive, profane, derogatory or offensive comments, but should go on to request the tweeters to immediately delete the offensive tweets and to advise them that if they do not do so they will be blocked. If that response does not result in an offensive tweet being deleted forthwith, @TTCHelps should proceed to block the tweeter. It may also be appropriate to seek the assistance of Twitter in having offensive tweets deleted. If Twitter is unwilling to provide such assistance, this may be a relevant factor for consideration in determining whether the TTC should continue to be permitted to use @TTCHelps.

While the arbitrator declined to order the TTC to shut down @TTCHelps, the parties were directed to create a social media policy to address inappropriate tweets made to the Twitter account.

With the growing trend amongst employers to increase their social media presence, it is important to ensure that accounts are being monitored and that appropriate action is being taken against harassing or discriminatory comments. As this case demonstrates, it is prudent to have a social media policy in place to address situations involving harassment and discrimination by third parties directed at employees on social media platforms such as Facebook, Twitter and Instagram. Finally, employees who feel they are being harassed or discriminated online by third parties should address these concerns and ensure that action is taken.

Employers take note!
New Accessibility of Ontarians with a Disability Act (AODA) requirements
take effect January 1, 2017.
Please contact us A.S.A.P. if you have not yet updated your policies