



Navigating the Boundaries: Employees' Actions Outside Work and the Potential Impact on Employment

Introduction

In the interconnected world of today, employees' obligations to their employer extend beyond the boundaries of the workplace. However, often employees are not aware of this i.e. that their actions outside of work, either in person or online, can ultimately impact their ongoing employment. The recent Employment Court case 'Turner v Te Whatu Ora – Health New Zealand' [2023] NZEmpC 158 serves as a compelling example of how actions outside of work can influence employment. In this blog post, we'll explore this case and discuss considerations for employers when investigating actions or behaviour outside of work.

The Case of Turner v Te Whatu Ora – Health New Zealand

In this Employment Court case, Ms Turner, a registered palliative care nurse and employee of Te Whatu Ora – Health New Zealand (formerly Wairarapa District Health Board (DHB)), claimed that the DHB acted in a discriminatory manner and ignored her rights to privacy and to freedom of expression, in regards to a series of posts on her personal Facebook account. These posts, while made in her personal capacity, were deemed by the employer to be inconsistent with the values and expectations of the organisation. Ms Turner also

raised claims regarding the DHB's process, including its process to suspend her, and she claimed that the dismissal was unjustifiable.

The DHB took the position that the Facebook posts raised legitimate concerns about Ms Turner's judgment and professionalism. Ms Turner's posts on Facebook canvassed several themes. They expressed concern about the COVID-19 vaccine, including Ms Turner writing in opposition to a Māori specific COVID-19 vaccine plan. The court said that there were also "a substantial number of posts that expressed concern about Muslim immigration into New Zealand and which [could] only be described as derogatory towards Muslims generally as well as particular Muslim individuals." Additionally, the court found that amongst the posts was "a post that is derogatory of a non-binary person and posts attacking Government and the then Prime Minister, but those posts were not raised during the DHB's process."

In the DHB's process with Ms Turner, the Nursing Council of New Zealand (NCNZ) Code of Conduct was referenced. It provides specific obligations about the acceptable conduct of registered nurses, including specific standards relevant to the matters being investigated. The DHB also had a social media policy and Code of Conduct that they also referenced in their process.

The Employment Court supported the employer's decision to terminate Ms Turner's employment, emphasising that while employees have a right to express personal opinions outside of work, there are limits. The court considered the potential impact of the posts on the employer's reputation, its relationship with key stakeholders, the relevant policies and Codes, and the trust and confidence necessary for Ms Turner's role.

Considerations for Employers

While in this case the initial concerns related to posts on social media, it's important to highlight that there are many other actions by an employee outside of work that could also be considered inappropriate in regards to their employment obligations.

When investigating actions or behaviour outside of work, employers do need to tread carefully, recognising the delicate balance between employees' personal lives and the potential impact on the workplace. Here are some of the considerations:

Relevance to Employment: Evaluate the relevance of the employee's alleged actions to their role and the organisation. There should be a clear connection between the behaviour and the employment relationship. Can you show how your employee knew what their obligations were?

Human Resources Policies: Establish and communicate clear policies, that explain how obligations to the employer may extend to actions and behaviour outside of work. Employees should be aware of the organisation's expectations regarding their conduct outside of work, and online, including when it may affect the employer's reputation.

Public Perception: Consider the potential impact on the organisation's public image, where the matter could impact the organisation's reputation. If an employee's actions outside of work could harm the employer's reputation or relationships with stakeholders, it may be a legitimate concern.

Fair Process: Ensure a fair and transparent investigative process. Provide employees with an opportunity to explain their actions and ensure you consider any relevant context before reaching any

decisions. Also ensure you encourage the employee/s to have a support person or representative with them in any meetings or discussions about any allegation made.

Consistency: Apply policies consistently. Avoid selective enforcement and ensure that all employees are held to the same standards.

Privacy Considerations: Be mindful of your Privacy Act 2020 obligations when investigating, monitoring employees, or collecting, using or storing employee information.

Conclusion

The 'Turner v Te Whatu Ora – Health New Zealand' case highlights what has been an ongoing obligation within the evolving nature of employment relationships in the digital age. While employees have a right to express personal opinions outside of work, employers also have a legitimate interest in protecting their reputation and upholding their obligations to others. Striking the right balance requires clear policies, fair processes, and a thoughtful approach to investigating actions or behaviour outside of work. Employers must navigate this terrain with sensitivity, recognising the complex interplay between personal lives and professional responsibilities.

How I can Help

I am a registered investigator with a lot of experience conducting a wide range of employment-related investigations.

I can assist you to:

- Develop or review relevant policies and procedures.
- Assist you to undertake a disciplinary investigation or advise you about the steps to follow.