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Social media and employer disparagement: to like, or not to like?

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PATRICIA BARBOZA,
MAURY LOBO



It seems reasonable to dismiss an employee who has posted content on social media that could damage their employer's reputation. It is unclear, however, how to effectively measure what poses a threat to an employer, whether it be through an original or shared post, a comment or a "like". What should be addressed is ways in which to mitigate risks for the employer in such circumstances.

Termination for cause in Brazil is an exceptional measure that can be taken to terminate an employment relationship. It is a severe punishment and leads to a limited severance payment compared to termination without cause.

It is only permitted in situations that make it impossible for the employment relationship to continue. This can be preceded by warnings or suspension from work without payment, in case of continued mildly severe misbehaviour or applied without previous disciplinary measures in a more serious situation.

While social media is an unavoidable part of life, and freedom of speech is a constitutional right guaranteed to every Brazilian, the courts have been upholding the termination of employment for cause when employees post content on social media that is deemed defamatory to their employers. In some cases, employees have been ordered to pay pain and suffering damages to their former employers.

A more interesting question lies in what constitutes fair punishment when the employee is not the author of a defamatory post, but has shared it, commented on it, or liked it.

There is no law governing such a matter but considering the general rule on the proportion between the misbehaviour and the disciplinary measure, termination for cause would be hard to uphold when the employee was not the author of an offensive post.

A social media policy is a great tool to create evidence regarding the employee's acknowledgement of the consequences of posting, sharing, commenting, or liking posts related to the company. Social media training is an addition method to avoid situations that, even unintentionally, could lead to termination of employment on bad terms, and the litigation that often arises as a result.

A more complex question is how to address employees' online behaviour that is not a direct aggression towards the company, but rather inconsistent with the company's values.

For further information on this topic please contact Patricia Barboza or Maury Lobo at CGM Advogados by telephone (+55 11 2394 8900) or email (patricia.barboza@cgmlaw.com.br or maury.lobo@cgmlaw.com.br). The CGM Advogados website can be accessed at cgmlaw.com.br.