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Employee Rights in the Digital Age: The Cancel Culture and Employee Rights in South Africa

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Understanding Cancel Culture in the Digital Age

- Cancelling includes calling in, boycotting and calling out on social media.
- US Federal Court defined "cancel culture" as **retracting support following offensive actions/statements..** *Rio Grande Found. v. Oliver*
- Swift and severe outcomes such as loss of employment, social ostracism, and reputational damage.
- Shaped by South Africa's complex history of social and political struggles, including apartheid legacy and ongoing debates on race, identity, and social justice.



"Just about every week, we see the same story. Someone takes a jittery smartphone video of a person caught in the act of doing something that's labelled racist. An army of online commentators mobilises. The video goes viral. And the person in the video is publicly shamed, often losing a job or being ostracised by the community. His or her name becomes a hashtag for hate."- Blake

.....Blake

- Blake highlights the frequent occurrence of cancel culture, facilitated by digital technologies enabling rapid dissemination of incriminating content.
- an "**army of online commentators**," symbolises collective condemnation on digital platforms-Illustrating tangible impacts like job loss and ostracism
- Transformation of the accused person's name into "a **hashtag for hate**" symbolises the phenomenon of hashtag activism, amplifying repercussions.
- Raises questions on accountability, justice, and individual rights in the digital age

Digital dynamics and labour law

- **Digitisation intersects with labour law in cases of dismissal for off-duty misconduct.**
- **digital technologies and social media platforms have blurred the boundaries between personal and professional lives.**
- **creates challenges in determining the extent to which an individual's off-duty conduct can impact their employment status.**
- **challenges addressing misconduct outside the workplace, especially if there is public scrutiny on social media resulting in conflicts between employer and employee rights**

Rights in the employment relationship

- **ILO establishes global standards for worker rights and promotes social justice, ensuring fair labour practices.**
- **South Africa's 1996 Constitution protects fundamental rights, including those of employees, ensuring freedom of expression, dignity, and privacy.**
- **The LRA and BCEA provide additional safeguards, guaranteeing fairness and equity in employment practices.**
- **South Africa's legal framework, aligned with global standards, safeguards both employer and employee rights.**



Limitation of Rights in South Africa: Section 36 of the Constitution

- **The Constitution allows reasonable restrictions on rights, balancing individual and societal interests.**
- **Before imposing limitations, factors like the purpose, nature, and alternatives must be weighed.**
- **Limitation clause defines constraints while minimising interference with the right being limited.**
- **Relevant in dismissals for off-duty behavior, especially in cancel culture cases, where employers must balance rights and organisational reputation.**



Dismissal for Off-Duty Social media Misconduct and Cancel Culture

- **Off-duty misconduct, especially on social media, can impact both professional and public spheres due to cancel culture's amplifying effect.**
- **Dismissals for off-duty social media misconduct require a clear link to employer interests like reputational harm.**
- **Increasing dismissals in SA reflect cancel culture's influence, prompting vigilant monitoring by employers.**
- **Employers must balance freedom of expression with protecting professional reputations against cancel culture's scrutiny.**
- **Upholding employee rights remains crucial amid rising dismissals for social media misconduct.**

Case Law

Edcon Ltd v Cantamessa and others [2020] 2 BLLR 186 (LC)

- Cantamessa made derogatory remarks about the SA president and government on her personal Facebook account.
- Despite being off-duty and intended for a limited audience, the post was leaked, leading to her termination.
- CCMA= dismissal unfair-minimal relevance-no policy breach, and no harm to Edcon's reputation or finances.
- LC= Dismissal fair-connection between her conduct and Edcon's interests.

Case Law

Cliff v Electronic Media Network (Pty) Ltd and another [2016] 2 All SA 102

- **Cliff, a brand ambassador for M-Net, faced termination due to public backlash over his social media activities.**
- **Cliff's tweet in support of freedom of speech sparked controversy, leading to his termination by M-Net.**
- **HC ruled the termination unjustified, citing unfounded allegations of racism and reputational harm to Mr. Cliff.**
- **While not an unfair dismissal case, his termination raised significant implications regarding social media conduct and employment relationships.**

- ***Makhoba v Commission for Conciliation, Mediation and Arbitration and others [2021] JOL 53703 (LC)***
- **Employee dismissed for racist Facebook comment advocating violence against white people.**
- **CCMA: Dismissal upheld due to severity of remark in racially sensitive context. Location deemed irrelevant; severe misconduct treated without considering off-duty aspect.**
- **LC upheld dismissal due to familiarity with company's code, Emphasised gravity of racism; employer's duty to ensure safe, non-discriminatory workplace.**
- **Racism deemed severe offence, justifying dismissal to uphold workplace safety.**



Other incidents

- **Adam Catzavelos case:** Made racist comment in video celebrating absence of black people at Greek beach.
- Video circulated on social media, sparking public outrage-Promptly dismissed from family business, highlighting zero-tolerance stance on racism.
- **Katlego Maboe Controversy:** Accused of infidelity and abuse in video circulated on social media.
- Public reaction led to suspension from TV show "Expresso" and loss of endorsements.
- **Penny Sparrow Incident:** Posted derogatory remarks about black South Africans on Facebook.
- Backlash led to legal action, fine for hate speech, and social and professional repercussions.

Analysis of Case Law

- **Cantamessa's dismissal highlights the impact of personal conduct on employment.**
- **Employers fear reputational damage and potential cancellation in the face of public backlash.**
- **Clear social media policies are crucial for delineating boundaries between personal expression and professional conduct.**
- **The case underscores the importance of legal precedent in shaping interpretations of labour law.**
- **Employers and employees must navigate these complexities with awareness of their rights and responsibilities.**

.....Analysis of Case Law Continued

- **Gareth Cliff's case underscores the challenges of navigating the boundaries of free speech and reputational concerns in the digital age.**
- **The Adam Catzavelos and Katlego Maboe incidents illustrate the real-world consequences of cancel culture.**
- **Catzavelos faced swift dismissal from his family business, while Maboe experienced suspension from his TV show and loss of endorsements, highlighting the severity of public backlash.**

Challenges

- **Cases highlight challenges in managing personal expression and professional conduct amidst social media and cancel culture dominance.**
- **Social media's immediacy magnifies individual actions, subjecting both individuals and organisations to cancel culture scrutiny.**
- **Interconnected personal and professional spheres online blur private/public lines, heightening vulnerability to cancel culture.**
- **Monitoring and clear conduct guidelines are crucial for mitigating reputational risks and navigating cancel culture efficiently.**
- **Individuals must understand the consequences of their online actions.**



Impact of Cancel Culture on Employee Rights

- **restricts employees' freedom of expression, fostering self-censorship and inhibiting diverse viewpoints essential for workplace innovation.**
- **breaches employees' privacy by scrutinising personal lives, blurring professional boundaries, and exposing individuals to judgment, compromising autonomy.**
- **jeopardises job security, resulting in severe repercussions like job loss, financial harm, and reputational damage, fostering fear and undermining trust in the workplace.**
- **undermines employees' dignity through public shaming, loss of control over personal information, stigmatisation, and psychological impact**



Recommendations on Addressing the Negative Impact of Social Media and Cancel Culture

- **Implement comprehensive policies addressing off-duty conduct, social media use, and free speech.**
- **Conduct educational sessions to raise awareness about the impact of online behavior on personal and professional reputations, and the potential consequences of public scrutiny.**
- **Educate employees on privacy rights and data protection policies.**
- **Empower employees to take responsibility for their privacy protection.**
- **Update legislative framework to address digital and social media challenges.**



Conclusion

Enhancing awareness of the profound impacts of social media in today's world and adapting workplace dynamics to align with the digital landscape can facilitate a harmonious balance between employer and employee interests, thereby cultivating equitable workplaces.