

Navigating Employment and Freedom of Expression Amid the Israel-Palestine Conflict: Questions and Answers



Muslim Legal Support Centre

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This informational document offers crucial insights into the legal entitlements of protestors in Canada and offers recommendations to facilitate peaceful and lawful demonstrations. *Disclaimer: This information should not be interpreted as legal advice or be construed as such.*

1 What is considered “the workplace”?

- The workplace transcends the physical office space. If your private actions contradict your organization's core values, the location becomes irrelevant.

2 What can employers communicate?

- Employers are permitted to make both internal and external statements regarding the conflict. While some comments may cause discomfort among employees, it's important to note that discomfort alone does not necessarily constitute discrimination. When assessing such statements, an adjudicator would consider whether they were objectively discriminatory and whether an impartial observer would perceive them as having a divisive nature.

3 Can you be fired for voicing X opinion on X matter?

- Employees can either be terminated "for cause" or "without cause". If terminated for cause, this means that the employer believes that the employee has engaged in willful misconduct which disentitles them to any form of termination pay.
- Without cause means that the employer does not have to provide you with a reason for termination but does have to provide you with reasonable notice which may include termination pay.
- Termination can be unlawful if influenced by factors like discrimination, harassment, or reprisal (e.g., disability, remarks, religion, or ethnicity). Ontario's Human Rights Code ("Code") safeguards employees against discrimination based on enumerated grounds like
 - race,
 - ethnicity,
 - family status,
 - ethnic background

4 Can an employee participate in a protest in support of whatever their view is outside of work?

- It's crucial to consider the context, timing, and how the protest is objectively perceived. Simply attending a peaceful protest or initially peaceful event should not lead to termination by itself. However, if you attend an event with a widely perceived purpose of promoting hate, a decision-maker may argue that your presence was inappropriate, as it would be reasonable for most people to recognize the rally's intent.
- In the current environment, attending even a peaceful protest might have workplace consequences, but there could be opportunities to challenge these consequences. Ultimately, the decision lies with the individual hearing your case.

5 If an employee is disciplined or fired for expressing their opinions or showing support and believes it's an unjust termination, what actions can they take?

Scenario 1: You just got fired

- In the event of your termination, your best course of action is to immediately contact a lawyer and assess the viability of your case.

Scenario 2: You are attending an investigation meeting before getting fired

- When attending an investigation meeting before a potential termination, employees should thoroughly review relevant policies to understand their rights and responsibilities. It's worth noting that some policies allow for legal counsel to be present during such meetings.

- Employers are expected to maintain consistency and not selectively apply policies. If you're questioned about something you posted, it's entirely appropriate to inquire about the examination of other social media posts and whether similar meetings are being held for colleagues. This serves to emphasize the importance of maintaining consistency.

6 What is the legal impact of statements released by employers expressing support for one side of the conflict or mourning the loss of lives from only one side?

- Employers possess the authority to issue statements regarding the conflict, whether internally or externally. Whether an employee can take action in response to such statements hinges on the nature of the statement, whether it targets a specific group, and if it breaches any relevant legislation or exhibits discrimination. Employees have the option to raise questions about these statements with their employer or HR department.

7 What if someone is reprimanded/terminated/disciplined after asking an employer about their statement on the conflict?

- If you are simply exercising your right as an employee by asking a question or addressing issues of being targeted in the workplace, you have recourse to file a complaint.
- You can take the position that there has been a reprisal and you are asserting your rights from a human rights perspective or from an occupational health and safety perspective that simply asserting your rights resulted in the employer retaliating against you and our legislation does not allow for that.

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8 Can an employee be terminated for posting about the conflict on social media?

- If your social media posts conflict with your organization's core values, there might be potential consequences. While employers can intervene in your freedom of expression, such as asking you to remove a social media post, it must be a reasonable and proportionate intervention.
- In the event of termination or disciplinary action, the outcome depends on various factors, including the content of your post, your role within the company, and whether you identified yourself as an employee online.

9 Can employees in management roles with private social media accounts still face termination for their posts?

- Employees who maintain that their social media accounts are personal and not official representations of their employer may still face potential consequences for their posts. While adding a disclaimer for protection is a good idea, it's crucial to understand that the decision to take action remains with the employer. If the content of their social media activity conflicts with their organization's core values and has a detrimental impact on the company, it can be a problem. Termination or disciplinary actions may depend on several factors, including the content of the posts, the individual's role within the company, and whether they identified themselves as an employee online. In such cases, the outcome may vary based on these considerations.

10 What are the rights and distinctions between employees and independent contractors, like physicians, when it comes to expressing views on this conflict or posting on social media?

- For physicians practicing at hospitals without an employment contract, their actions in their personal lives could lead to the hospital revoking their privileges. In such cases, the hospital might face a human rights complaint. Independent contractors may not have legal protection under the Employment Standards Act or the Occupational Health and Safety Act, but they are covered by the comprehensive Human Rights legislation. It's important to note that the Human Rights Code only applies to provincial employers, not those at the federal level.

11 Can workplace conduct or off duty conduct be a subject of a regulatory complaint?

- Yes, it is possible. Yet, the mere filing of a complaint against you does not necessarily validate the accusations made. It's advisable to consult with a legal expert.
- Engaging in certain actions in your personal life could lead to a complaint with your regulatory body. They often consider factors like your role within the organization, the organization's values, what you said or did, and whether it contradicts the organization's core values or is objectively discriminatory.

12 What does "political discussion" mean as a protected ground?

- Political belief is not specifically listed as a protected category in Ontario.
- Having a political conversation at work or an employer establishing a general policy against discussing politics is not inherently inappropriate. However, any policy implemented by the employer must have a logical connection to the business. A company can institute a policy to discourage political discussions in the workplace, as long as it's not an unjust policy that singles out a specific group.

13 What are the impacts of liking and reposting content on social networks on the topic without leaving comments or engaging in discussions?

- The impacts depend on the context of the posts that are being engaged with, it is advised to speak to a lawyer if terminated on this basis.
- Sharing content that conflicts with your organization's core principles can be a cause for concern. It becomes problematic when your content affects the company's operations, contains explicit instances of discrimination, or requires limiting your freedom of expression to prevent discrimination in the workplace against others.

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14 Can an employer request access to an employee's private social media account and send screenshots for a disciplinary review?

- Yes, if your private actions contradict your organization's core values and involve discrimination, they can be used against you. Even if you use an anonymous account, if it can be proven that you were the one behind the posts, the same consequences apply.
- It's crucial never to provide false information during an investigation. Even if your employer lacks a valid reason to terminate your employment, dishonesty in an investigation meeting alone can be grounds for termination with cause, even if your actions do not warrant disciplinary action or termination.

- It's essential to recognize that public sector employers and employees have a lower threshold for permissible actions and might face more substantial consequences compared to those in the private sector.

Resources

National Council of Canadian Muslims (NCCM)

Report Islamophobia Incident
www.nccm.ca/report/

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416-350-2914

15 What if the employer is the Federal government? How can we tell the government to be fair by not endorsing one side and not the other?

- The federal government, as a public employer, has the authority to impose reasonable and work-related policies that may limit your freedom of expression. If these policies are applied unfairly or with bias, you have the right to hold the federal government accountable.
- Employers regulated by such rules have a clear right to restrict your freedom of expression. However, expressing views that oppose a government's stance on an issue doesn't automatically grant your employer the right to terminate your employment.