

# **THE CONTENTIOUS CROSSFADE BETWEEN PROFESSIONAL AND PRIVATE BEHAVIOR: DEBATING EMPLOYER CONTROL OVER OFF-THE-CLOCK ALCOHOL CONSUMPTION AND SOCIAL MEDIA ACTIVITY UNDER AT-WILL AND JUST CAUSE EMPLOYMENT STANDARDS**

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*Should indulgences in your private life cost you your career? Proponents of healthy work-life balance continue to push for a clear separation between professional and private settings; however, an increasing number of employers are seeking to control off-the-clock employee behaviors that could negatively affect their business. In particular, this paper considers employer opposition to the after-hour use of alcohol, drugs, and social media and the necessary considerations for making termination decisions based on off-the-clock behaviors. In truth, an employer's legal ability to consider the off-duty behavior of an employee is a function of how a nation views the balance between employee and employer rights. That is, at-will employment in the United States and just cause employment in the United Kingdom have been found to be dissimilar in the way such dismissals could be argued. In any case, it remains a question of boundaries. Simply put, to what extent can, or should, employer policy control people's personal habits outside the workplace?*

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## **INTRODUCTION**

Mondays were usually uneventful for junior salesman, Peter Mims. He was preparing for a sales pitch to a prospective new client at 2:00 pm, when he received a tap on his shoulder from his supervisor, Derek Duhamel. It was time for Peter's random drug and alcohol screening. Peter had been working for his present employer, a light manufacturing company outside Bristol, UK, since March 2002. Yet in spite of having been with the company for a year, this was the first time he had been chosen for an employee health test. Derek took Peter downstairs to a side room where a white-coated woman, Caroline Greenwood, was waiting. Peter completed the test as instructed; however, he was anxious about the results. This wasn't like Peter, but he had just returned from a quick get together in town to celebrate his friend's birthday. He had done the math he thought. An hour for every

unit of alcohol consumed should put him at a safe distance from his final beer. This, however, was not the case. The next day Peter was summoned to Derek's office. "We love your work," Derek had begun. However, Peter knew what was next. "Good luck finding a new job" Derek had called after him as his office door swung shut. Even though the sendoff was genuine, it did little to soften the harsh truth of his situation: Peter's off-the-clock behavior had cost him his job (see Campbell, 2003). Is it fair that indulgence in your private life can hold such profound implications for your career?

Employers like Peter's have many motivations for maintaining a dry workforce. Absenteeism, lateness, lost time on the job, general inefficiency, and risk of accidents have all been identified as alcohol-related problem behaviors in the workplace (Crofton, 1987). For these reasons, many businesses have now banned drinking during the workday, even during lunchtime (Coughlan, 2006). It is that lunchtime pint, however, that has many British citizen upset. According to Coughlan (2006), the lunchtime pint is more than a midday respite; it's "a cultural tradition in its own right" (para. 5). Indeed, British pub culture has had a long, storied history (Giles, 2015). For this reason, certain interest groups have spoken out against the growing number of employers that prohibit lunchtime drinking (Coughlan, 2006). Simply put, it's controversial because these polices are trying to control something that doesn't happen during work time.

### **OFF-THE-CLOCK SOCIAL MEDIA ACTIVITY AS A BASIS FOR DISMISSAL**

As society spends increasingly more of its leisure time online, the debate surrounding off-duty behavior has expanded to include social media activity. There have been several instances in which an employer fired an employee over what they had posted on social media (Gurchiek, 2017). One such incident occurred over Thanksgiving weekend 2017. Taiyesha Baker, a black nurse at Indiana University Health, tweeted that white women should not raise sons because white males have a higher chance of becoming a terrorist, rapist, or killer. She even went so far as to say that "every son you have should be sacrificed to the wolves [expletive]" (Bongiovanni & Briggs, 2017, para. 2).

Taiyesha posted her comments under the username Night Nurse; however, Indiana University Health investigators were able to link the account to Taiyesha. Although no explicit threats were made under this alias, Taiyesha had ominously claimed in another tweet that she worked in pediatrics. Investigators later reported that this was in fact false. Taiyesha had been an employee of the health system at the time the tweets were posted, but she did not work in pediatrics as she had indicated. As

quickly as the Sunday following Thanksgiving, a statement was issued indicating that Taiyesha Baker was “no longer” an employee at Indiana University Health (Dupuy, 2017).

Dupuy (2017) noted that Taiyesha’s case demonstrated how “social media has now made it easier for employers to monitor their employees’ actions after-hours” (para. 8). As such, many employers have affirmed that any sexist, racist, or inappropriate comments will not be tolerated (Doyle, 2018). This has extended to after-hour social media posts as such comments cause reputational harm to the organization.

### **AT-WILL AND JUST CAUSE EMPLOYMENT**

An employer’s legal ability to consider the off-duty behavior of an employee when making decisions related to employment termination is a function of how a nation views the balance between employee and employer rights.

In the United States, employees’ off-duty behaviors have been within the purview of employers when making hiring, firing, and promotion decisions. This intrusion by an employer into an employee’s private life was justified by at-will employment law, which dictates that either party, the employer or the employee, may terminate the employment relationship without notice or cause. In theory, both employers and employees were thought to be able to benefit from such an arrangement (Sonne, 2008).

In stark contrast to the at-will employment laws that prevail in the United States, the United Kingdom, and most of Western European, use a just cause employment standard. Under this standard, an employee could only be terminated for a “good cause,” exhibiting objective fairness to the employee, determined by a jury, judge, or arbitrator (Slater, 2007). On paper this standard provides greater protections for employees fearful of arbitrary termination (particularly related to off-duty behavior); however, what constitutes “good cause” can often be unpredictable and subjective.

### **CONCLUSION**

The issue of off-duty employer control can be distilled to two opposing viewpoints regarding what employees do when they’re not at work. That is, the employee mindset of “It’s none of your business” is often pitted against the prudent organizational tenet of “It’s our business when it effects [*sic*] our business” (Pagnattaro, 2004, p. 625). Although applying the organizational perspective as a litmus test for employee misconduct may seem straight forward, employers must be exceedingly cautious when considering employees’ off-duty behavior as potential grounds for dismissal. Any organization that encounters a polarizing issue such as the termination of Peter or Taiyesha for their off-the-clock behavior must

be proactive in analyzing its potential impact, especially in terms of how the public might see its actions. The organization must be methodic in how it deals with such potentially tumultuous situations (see Stanbury, 1993). The first step in crafting a measured response is assessing the legality and prudence of controlling off-the-clock behavior with threat of termination.

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