

### **Facebook posts and employer interest.**

A recent Employment Court case (*Turner v Te Whatu Ora – Health New Zealand*, in respect of the former Wairarapa District Health Board [2023] NZEmpC 158) considered whether an employee was unjustifiably dismissed for sharing anti-vaccination and anti-Muslim content on her personal, private Facebook page.

The employee was employed as a registered nurse, working in community palliative care for a District Health Board (DHB). The nurse shared COVID-related anti-vaccination content with 86 friends on her Facebook page. Her posts included strongly worded statements telling people the vaccine was not safe and they should not get vaccinated. The employee specifically told Māori to not get the vaccine. The nurse also shared anti-Muslim content on her Facebook page.

Another nurse who had access to the employee's Facebook page told the employer about the anti-vaccine content. The nurse said the anti-vaccine content had made staff at an aged residential care facility question whether to get vaccinated. The nurse gave the employer screenshots of the anti-vaccine content. The nurse also shared screenshots of anti-Muslim content posted on the same page. The employer carried out an investigation and then dismissed the employee for serious misconduct.

An issue was whether the employer could rely on content shared on a private Facebook page as a basis for dismissing the employee.

The Employment Court (Court) found that social media posts shared in the employee's free time and containing their personal opinions could still have employment consequences if they brought the employer into disrepute or eroded the employer's confidence. The Court found that because the employee had 86 Facebook friends, the posts could not "be regarded as truly private...the posts were accessible to other employees of the DHB and employees of the aged residential care facility" (see paragraphs 72, 73).

The Court found the posts were directly contrary to the position taken by the Ministry of Health and the DHB on vaccines and "had the potential to undermine the trust and confidence of the public in the DHB" (see paragraph 67). The Court took into account that the employee shared the anti-vaccine posts when the DHB was actively involved in work to support and deliver the Government's vaccination programme. The Court noted that aged residential care facilities were particularly vulnerable and the employee was a respected medical professional whose views could influence the elderly and people with health issues (see paragraphs 81–82).

The Court said anti-Muslim posts ran counter to the DHB's Code of Conduct and the Nursing Council of New Zealand Code of Conduct and could harm the DHB's reputation (see paragraph 83). The Court said freedom of religion protections did not apply to the anti-Muslim posts (see paragraph 66).

The Court found the employer was justified in dismissing the employee in response to the Facebook posts. The Court found that the employer had followed a fair process. The Court said the employer gave the employee the opportunity to respond to concerns about the posts and her explanations did not mitigate her actions (see paragraphs 84, 85).

Source: [employment.govt.nz](https://www.employment.govt.nz)

### **Modern Slavery Reporting Bill**

It is likely that this Bill, which was introduced into Parliament before the election, will proceed. The Bill seeks to reduce the risk that goods produced within or imported into New Zealand are linked to child and/or forced labour by requiring requires entities to declare the origin of their goods. Entities must also report on the measures taken to ensure that the production and importation of their goods into New Zealand are not linked to child or forced labour at any stage of the process.

Several New Zealand entities already comply in part or fully with such provisions, especially those New Zealand entities carrying on business on both sides of the Tasman. This Bill responds to various calls for modern slavery legislation to be enacted in New Zealand including the Government's "Draft Plan of Action against Forced Labour, People Trafficking and Slavery: 2020 – 2025", published in September 2020.

Modern forms of slavery include various types of exploitation in a workplace setting, such as requiring workers to pay for their job; denying leave; requiring excessive work hours; under-paying or not paying agreed wages; failing to provide an employment contract; retaining and withholding passports; controlling the living conditions, movement and communication of individuals; and threats and intimidation. Other forms of exploitation, which can include sexual exploitation, occur outside of a workplace.

Entities that have an annual total revenue of more than \$100,000,000 will be affected if they are a New Zealand entity, or an overseas company carrying on business in New Zealand or a New Zealand government agency.

Source: [Parliament.nz](https://www.parliament.nz)

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