

CILINNIE NGO-PONDI, SOCIAL MEDIA & UNFAIR DISMISSAL: DON'T TWEET YOUR WAY TO A P45 (Employee Rescue Limited, 2014).

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Social Media & Unfair Dismissal: Don't Tweet Your Way to a P45

*"It remains permanently in the ether to come back and haunt you, when you least expect it."*¹

Cilinnie Ngo-Pondi's *Social Media & Unfair Dismissal: Don't Tweet Your Way to a P45* is an informative guide for employees and employers on how to prepare a defense if the reader, as an employee, has used social media and the Internet inappropriately. The author uses examples of how employees could use the Internet inappropriately which could result in disciplinary action, disciplinary sanctions, or even termination. The author urges employees to read this book if they are currently facing disciplinary action for inappropriate use of the Internet and social media sites because it lays out your legal rights, applicable case law, and possible resolutions. This book will help readers build their own case in a comprehensive and effective manner. This guide is mainly for European employers and employees, but many of the examples

¹ See CILINNIE NGO-PONDI, SOCIAL MEDIA & UNFAIR DISMISSAL: DON'T TWEET YOUR WAY TO A P45, 1 (Employee Rescue Limited 2014).

used and tips to avoid termination can easily be applied to employers and employees in the United States.

The purpose of this book review is to analyze Cilinnie Ngo-Pondi's work and see if it is user-friendly for the average reader. This is a neutral review by someone who is unfamiliar with European employment law and therefore, thus I will be able to appropriately determine if a reader could build a proper defense based on the tips and checklists Cilinnie Ngo-Pondi outlines in her book. I will later discuss some of the self-help websites she suggests and recommend them if they are useful for the intended purpose.

The author, Cilinnie Ngo-Pondi, is a legal professional with over 20 years of experience in representing employees across the United Kingdom, New Zealand, Australia, and Africa.² Ngo-Pondi has a LLB (Hons), which is a practical law degree that is “designed to help you become career-ready by giving you the skills you need to succeed in legal practice.”³ Ngo-Pondi has dedicated her professional career to employment law issues and has written many books on the subject. She has written *Surviving a Work Place Suspension* (2016), *Barefoot Eyes* (2014) and a series of Employee Rescue Guides, including titles such as *The Disciplinary Hearing: Understanding the process, and surviving it* (2015), *Alcohol and drugs at work: A guide to dealing with your problem* (2015), *Employee Representative Guide: For non-union workplaces* (2015), *Capability or Performance Management: Understand the process and keep your job* (2015), *How to survive a criminal charge, conviction, caution or police investigation at work* (2014), *Health and Safety Dismissal: A Guide to your rights* (2014), *Surviving a Workplace Suspension* (2014), and *Surviving a Workplace Investigation* (2014).

² See Ngo-Pondi, *supra* note 1, at 64.

³ BPP University, *LLB (Hons)*, archived at <http://www.bpp.com/undergraduate-course-details/d/undergraduate/LLB/97>.

Social Media & Unfair Dismissal: Don't Tweet Your Way to a P45 mainly covers European law and case law, but the author does use some American cases to illustrate different scenarios. For example, Ngo-Pondi uses *PhoneDog v. Noah Kravitz*, N.D. Cal. (2011), to illustrate the point that Twitter accounts and their passwords may be considered trade secrets if an employee uses a work-related Twitter account after termination and then uses it while working for a competing company.⁴ Some of the European laws discussed are the Equalities Act 2010, providing protection against discrimination and harassment for protected characteristics in the workplace, the Protections from Harassment Act 1997, the Malicious Communications Act 1988, the Private Interest Disclosure Act 1998, which covers whistleblowing, the Defamation Act 2013, Data Protection Act 1998, and the Employment Rights Act 1996.⁵ The author nicely defines each of the acts and then supplements them with existing case law. The book is broken down into three main subject areas. The book starts off by highlighting some social media and Internet-use mistakes, then moves into appropriate and proportional disciplinary action and fair procedures by the employers. Next, the author discusses possible defenses under workplace policies, a defense based on human rights, and finally, a no damage to reputation defense.

Cilinnie Ngo-Pondi states that her book is a guide that will assist employees and employers prevent or combat disciplinary action for inappropriate Internet use related to the workplace. The author claims that if you use her guide and recommendations to prepare a defense, the reader's worst case scenario would be "enough ammunition to negotiate a settlement agreement and leave on agreed terms rather than be dismissed" from employment.⁶ Some examples of cases used in this book include employees posting on social media sites harassing

⁴ See Ngo-Pondi, *supra* note 1, at 16-17.

⁵ See Ngo-Pondi, *supra* note 1, at 4-30.

⁶ See Ngo-Pondi, *supra* note 1, at 2.

comments or pictures about other employees, employees posting during work hours, and employees posting negative comments about their workplace. Some of the legal claims in these suits included libel and defamation, harassment and discrimination, public disclosure of a private fact, intellectual property, and breach of contract. The author also explains that “[t]here is no specific regulation of social media, so existing employment, criminal, data protection and human rights laws apply.”⁷ For employers, when deciding what steps to take when an employee has misused social media or has been inappropriate on the Internet, it is of extreme importance to be fair and reasonable in your disciplinary procedures and investigations. If not, the employee may have a claim against the employer and as a result, may not be terminated.

Employees may be able to defend their actions using their employer’s work policies. Many companies today do have policies regarding Social Media and Internet use, but sometimes the employer’s policy may be unclear, which leaves room for a defense. Workplace policies should be fairly applied to all employees, trainings may be necessary for new policies, policies should include definitions, especially of gross misconduct, and must be communicated clearly to all employees.⁸ Ngo-Pondi also explains in detail, a defense based on human rights based on Articles 8 and 10. For Article 8, she explains that every person is entitled to respect for his private and family life, and provides case law to show where this defense works and where it does not work.⁹ Similarly, she provides the same for an Article 10 defense and explains everyone has the right to freedom of expression.¹⁰ Finally, the author explains a no damage to reputation defense where employers cannot simply argue that their social media policy has been

⁷ See Ngo-Pondi, *supra* note 1, at 2.

⁸ See Ngo-Pondi, *supra* note 1, at 43.

⁹ See Ngo-Pondi, *supra* note 1, at 44-45.

¹⁰ See Ngo-Pondi, *supra* note 1, at 46-51.

breached, and the employment tribunal will look at all relevant circumstances and whether or not the employer acted reasonably.

Overall, I think Ngo-Pondi's book is a useful guide for employers and employees. She successfully takes a lot of complicated law and case law and boils it down into a small user-guide, which is comprehensive and easy to read. A major strength of this book is the websites she includes at the end of every chapter as a reference for users. For example, Employee Rescue (www.employeeescape.co.uk) is an incredible tool for employees to use. This website is easy to navigate and explains issues in the law, which can be incredibly complicated in employment law. It is also very user-friendly and helps users identify potential legal problems. Another great feature and strength of this book is the Checklist and Statement of Defense in the Appendices of the book. The first Checklist helps employees identify whether or not they have a legal problem, and then what that legal problem is. The Statement of Defense helps an employee write out their defense, which they will have to present with evidence at their hearing. These two sources are incredibly important for employees who will have to defend themselves. Additionally, there are not many weaknesses in this book, however, there is the potential that it could become outdated quickly and may call for a second edition as more social media sites and Internet sources develop.

In conclusion, I absolutely recommend this book to readers in the United Kingdom and even in the United States. I would recommend this book to employees, employers, law professors, and law students. This book is very well set up and is incredibly comprehensive and easy for the reader to follow. There is a lot of great case law and resources for employees to become more informed of the rights they do and do not have. I do wish that there was a United

States counter-part to this book, which does the same type of analysis with American law and case law.