

# When it comes to ‘discriminatory’ social media posts, does Charlotte treat offenders equally?

## HIGHLIGHTS

Firefighters faced accusations of making racist Facebook posts, but they remain on the job

A fire investigator lost her job after posting a comment the city deemed ‘discriminatory’

She also had raised questions about the safety of a building the city was renovating



BY STEVE HARRISON

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“Inherently discriminatory.”

That’s how the city of Charlotte described a Facebook post from former fire investigator Crystal Eschert, who was fired in the fall of 2014. In the post, she described someone as a “thug,” “worthless” and a “waste.”

A year later, at least six other Fire Department employees faced accusations that they were posting racist memes and other offensive comments to social media. They remain on the job.

Eschert’s attorney says their fate supports her contention that Eschert was fired because she acted as a whistleblower when she told a City Council member that the Fire Department’s renovations of a new office were unsafe. She is suing the city.

ADVERTISING

Some say Eschert’s case – as well as the other questionable posts – raise questions about whether the city is being equitable in enforcing its social media policy.

In December, an anonymous person sent the first of several emails to Charlotte’s City Council members, city manager, fire chief and other officials. The Observer also received a copy. The emails had screenshots of social media posts that appeared to come from firefighters.

One was a meme that made fun of the names that some black women give to their children. Another showed a photo of several young, pregnant African-Americans and called them the “Real Housewives of Section 8” – a reference to a voucher program that helps low-income people find housing.

Another showed a photo of Daquan Westbrook, who was shot and killed inside a Northlake Mall store by police in December. The posting showed his corpse lying on the floor, and said he was a “Black Lives Matter Thug.”

City Council member Claire Fallon said city officials told her the Fire Department employees were interviewed by their superiors about the posts. She said some warning letters were placed in their personnel files, while others were given verbal warnings about making controversial or offensive posts.

The city of Charlotte declined to answer questions about the emails.

Fallon said the more recent social media posts were far more controversial and objectionable than what Eschert wrote. But Fallon said she doesn’t think anyone should have been fired over the posts because she believes people should feel free to express themselves.

In a Department of Labor investigation about Eschert’s case released in February, the city argued that Eschert’s role as a fire investigator was crucial in the city’s decision to fire her. City officials questioned whether Eschert would be an effective witness because of the Facebook post. The city said the District Attorney’s office said Eschert’s post would be “detrimental” to her ability to testify in an arson case.

## **Post followed Ferguson**

Eschert’s post came in the aftermath of the Ferguson, Mo. riots. She wrote on her Facebook page: “White guy shot by police yesterday near Ferguson ... Where is Obama? ... So tired of hearing it’s a racial thing. If you are a thug and worthless to society, it’s not race – You’re just a waste no matter what religion, race or sex you are!”

Eschert was the first and only city employee fired for violating its social media policy.

Though the city and the Fire Department won’t talk about the posts, state law does allow for the disclosure of a public employee’s termination. The public is also entitled to know when a public employee has had a “change of status,” which includes being suspended.

As of last month, none of the Fire Department employees who allegedly made the posts were terminated by the city. None were suspended in the last 18 months, covering the time period the posts were made.

Eschert has argued she wasn’t fired because of her Facebook post. She said that the Fire Department used the post as an excuse to retaliate against her because she had complained about the quality and safety of renovations CFD was performing on a building on North Graham Street. The building is now used as the home for fire investigators who probe possible arsons.

One of Eschert's complaints was that the Fire Department hadn't secured a necessary building permit for the renovations, an allegation that was correct.

She also complained about the air quality in the building; a consultant found much of the building was safe, but said there was a potential "mold amplification problem" in one area of the building and recommended further testing.

Fire Chief Jon Hannan said he and his department did not retaliate against Eschert for being a whistleblower.

Charlotte City Manager Ron Carlee hired an outside attorney to conduct an investigation of Eschert's charges. The attorney, Allison Van Laningham of Greensboro, found no "direct evidence" that the CFD retaliated against Eschert.

However, the report said many fire employees distrust department officials and said "the problem is so significant ... many believe that any infraction or departure from the desires of certain members of the command staff will result in unfair punishment, targeting, and retaliation."

In February, the N.C. Department of Labor released the findings of its investigation of the case, made at Eschert's request. It said there was "sufficient evidence to establish a violation of the law may have occurred" when describing Eschert's firing.

It added that the timing of Eschert's termination and her complaints about the renovations at the North Graham Street building were "highly suspicious."

"They are inconsistent in how they issued their discipline," said Meg Maloney, who is representing Eschert. "I don't think it's due to the nature of the violation. I think it's because Crystal was a whistleblower."

The Fire Department's social media policy, which hasn't changed since the Eschert case, states that someone can't "simultaneously identify oneself as a Charlotte Fire Department employee and ... display materials ... including sexually explicit material, graphic depiction of violence, or material that offends or harasses on the basis of race, sex, religion, color, national origin, age, disability, military service, sexual orientation, gender identity or expression."

The policy does not specify a punishment.

In Eschert's case, her postings did not identify herself as a Fire Department employee. In the screenshots sent to city officials, some of the more questionable postings included an employee's name, but not a clear sign they worked for the city. Other screenshots showing the person's name had photographs of them wearing CFD uniforms and at work.

The city of Charlotte's social media policy is less specific than the Fire Department's policy.

It says a city employee's actions must align with the city's code of ethics. The first part of that code is that "we will treat all people with respect, fairness, and courtesy – both the public we serve as well as our co-workers."

## **Unable to testify?**

In the Department of Labor report, Maloney, Eschert's attorney, said Eschert's political views shouldn't impact her ability to testify. She said what's important is her honesty, which she said isn't in question.

Eschert's lawsuit, filed earlier this month, lists other questionable social media posts made before Eschert's case. The DOL also reviewed some of those posts in its report.

According to the lawsuit, one Fire Department employee posted a video of a black mother with 15 children who needed financial help. The employee asked whether the woman should have been "neutered 14 kids ago."

Another post by a different employee was of the Kentucky Fried Chicken logo, Colonel Sanders. The colonel's face had been altered to appear black.

In the Department of Labor report, the city argued that Eschert's post could put all first responders in danger, if the community felt police and firefighters were biased.

The Labor Department's response: "However, there is no explanation why ... the comment about a woman not being neutered ... (doesn't) have the same effect on the safety of the department."

The DOL report didn't review the most recent social media posts, including the "Real Housewives of Section 8." Those were discovered as the state's investigation was concluding.

In the DOL report, the city said five employees had been disciplined for social media posts. None were fired.

Only one of the five employees worked for CFD. Two worked for the Charlotte Area Transit System, one worked for Neighborhood and Business Services and another worked for the 311 call center.

The CFD employee was former Deputy Chief Jeff Dulin.

In February 2015, when Eschert's case was in the news, Dulin shared a Facebook post that made fun of former Olympian Bruce Jenner, who was transitioning to a woman at the time.

The post showed a box of Wheaties from the 1970s, when Jenner was a gold medalist. The post then showed a photo of Jenner looking more like a woman. It was on a box of cereal called Fruit Loops.

Dulin was suspended and made a public apology. He then retired.

Dan Handman, a California attorney who specializes in workplace litigation, including social media issues, said it's common for employers to struggle with where to draw the line in terms of how to discipline employees. But he said it's important to have consistency in dealing with employees.

"Facebook was only started about 10 years ago," he said. "Civil rights laws have been around for 50 years. A lot of employers have been learning as they go along. It's hard to draw a line, and it's a gray area."

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## COMMENTS

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**Jim Parks**

Unless someone is posting to social media in his official capacity as a government employee, it's not the government's business to get involved.

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**Becky Ramsey** · Saguaro High School

Does anyone really have any question that she was fired in retaliation for whistleblowing? I sure don't! The social media policy is a convenient excuse that the City can use at will; it a cover story for the real reason she was canned. When you look at what she posted (a statement of frustration) compared to the extremely egregious, racist posts by other firefighters who still have jobs, the truth is evident. BTW, there should be NO "confusion" as to what is acceptable on social media. As a retired County employee of 27 years, I can attest that the rules were clearly stated. If you identify yourself as a County employee, be aware that whatever you post reflects on that. We understood that. Employees are reminded, "counseled", and have been terminated in extreme cases. Seems like the City has two sets of rules and uses the policy for retribution rather than really holding their staff to a higher standard of conduct.

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