Can You Fire Someone for a Nasty Tweet?

What every employer should know about the law and social media

Twenty years ago, talking smack to your friends rarely posed a threat to your workplace, but these days an employee's circle of friends can extend to a network of thousands, and anything posted on social media can be picked up and shared with millions.

In 2013, Justine Sacco, a thirty-year-old senior director of corporate communications at the media and Internet giant IAC, boarded a plane from New York to South Africa. Along the way, she tweeted a few mean jokes, then on a layover in Heathrow, tweeted: "Going to Africa. Hope I don't get AIDS. Just kidding. I'm white!"

She had only 170 followers, but by the time her plane landed in Cape Town 11 hours later, the tweet had circled the globe. The hashtag #HasJustineLandedYet was trending on Twitter and tens of thousands of angry people had tweeted back at her.

Totally unaware, Sacco was blindsided by the media storm she encountered when her plane touched down. She apologized profusely, but it didn't matter—the story didn't die. She was let go by her employers, and had a hard time finding a job after.

Unless you're Donald Trump, what you say on social media can get you fired. But as an employer, when exactly can you—and perhaps more importantly, when should you—take disciplinary action against an employee for unsavoury social media behaviour? We talked with Kseniya Veretelnik, a lawyer at Loranger Marcoux in Montreal, to find out.

The Sacco story is Veretelnik's favourite cautionary tale to illustrate the ramifications of social media. She suggests sharing it, or stories like it, with employees. "We hear the argument… 'Well, I thought it was private. I thought I just had a couple of friends.'…Even if you have only a few followers, content can be shared, and once it starts being shared, you can't take it back," Veretelnik says.

Our private lives are increasingly becoming public. Twenty years ago, talking smack to your friends rarely posed a threat to your workplace, but these days, an employee's circle of friends can extend to a network of thousands, and anything posted on social media can be picked up and shared with millions. So, what should you do if your employee defames your company, shares confidential information, or make highly offensive, racist or misogynist comments? What if they harass another employee? Does the offending post have to go viral before you can take disciplinary action?

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As is often the case in legal matters, Veretelnik laughs that the answer to pretty much any of these questions is: It depends. In the case of employee harassment, you have an obligation to act on it, but otherwise there are no hard and fast rules when it comes to social media. By and large, an offending post must damage the reputation, or have the potential to damage the reputation, of the organization. If a post is in poor taste but has no impact on the workplace, the employer must respect the employee's privacy and right of expression. Social media blurs the lines a little in that it's harder to decipher where the workplace ends and personal life begins, but in general, what an employee does in his or her private life is his or her business.

Veretelnik suggests employers take the following four steps:

1. Create a social media policy that details what social media means and what it extends to—there are more and more platforms—it's not just Facebook and Twitter anymore. Explain what kind of conduct is inappropriate and prohibited. The policy should also be personalized depending on the needs of your organization.

2. Update all your other policies, such as confidentiality agreements, to include social media.

3. When you encounter something problematic on an employee's social media feed, consider all the facts before making a hasty decision. Make sure whatever content you found has a clear connection to the workplace. It must be clear from the individual's social media profile that they are an employee. It also matters how many people will see the post. If the individual's account is relatively private (of course, there's no such thing as a totally private account) you may not be able to do anything.

4. Veretelnik says that most employers have no idea what their employees are doing until it's on the front page of the paper. Keep an eye on what employees do online, but bear in mind that it's a double-edged sword. You might find things that you don't want to see that you can't act on. And only monitor social media behaviour in a legal way. Never create a fake profile or ask employees to provide you with information on their coworkers. YW

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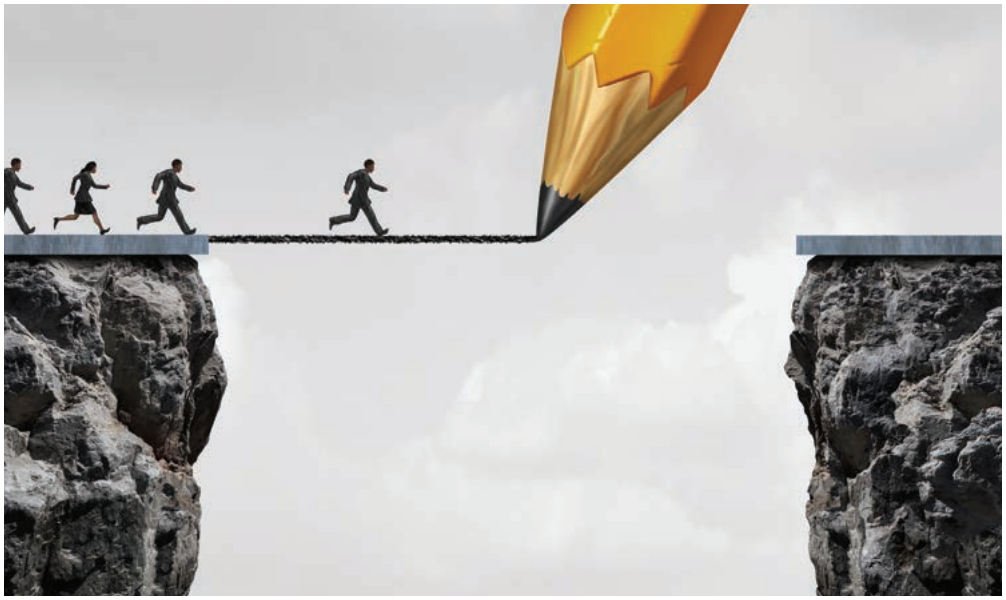
MANAGEMENT
Never create a fake profile or ask employees to provide you with information on their coworkers



Creating a social media policy is absolutely necessary in today's workplace

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Power Up: Brassicas

STAFF PICK

» EMILY FOLLETT-CAMPBELL IS JUNIOR EDITOR AT *YOUR WORKPLACE*

How often do we buy fresh produce with the best of intentions only to have it spoil before we have the chance to use it? Brassica root varieties such as cabbages, kohlrabi, radishes, daikon, turnips and rutabagas will not only last through our tough Canadian winters — they will also last in your refrigerator. Imagine, weeks after buying them, when you remember you wanted to make a salad, they will still be usable.

Brassicas are high in fibre and rich in vitamins A, C and K, as well as minerals and anti-cancer compounds — great for cold and flu season. If you're having flashbacks to your grandmother's boiled turnips, don't worry, they're also delicious in modern preparations like this Asian-inspired kohlrabi coleslaw. Make it for dinner and take it to work for lunch the next day and the day after. It will last for at least three days in the refrigerator. WW

How to cut a kohlrabi

No doubt you're wondering, "How do I cut into this thing?" Whether your kohlrabi is big or small, here's how to cut it into matchsticks:

1. Using a large knife, cut the kohlrabi bulb into a roughly square shape.
2. Finely cut off square slices.
3. Thinly cut the square slices into delicate matchstick-like sticks.
4. If your kohlrabi is on the larger side, cut the matchsticks into bite-sized pieces.

NOTE: If you can't get kohlrabi or Napa cabbage, you can substitute either with turnip or any variety of cabbage (even the prepared, already shredded, packaged kind sold in grocery stores — we won't tell).

Ginger Nut Brassica Coleslaw

PREP TIME 25 mins

YIELD 8 servings

INGREDIENTS

DRESSING:

- **¼ cup** sunflower oil (or other flavourless oil like vegetable oil)
- **¼ cup** seasoned rice vinegar
- **2 tbsp** honey
- **1 tbsp** soy sauce
- **1 tsp** Asian sesame oil
- **1 tbsp** smooth, natural nut butter, like almond or peanut
- **½ tsp** Sriracha hot sauce
- **1 tbsp** fresh ginger, minced or grated
- **1 clove** garlic, minced
- **½ tsp** salt

SALAD:

- **2 cups** kohlrabi, cut into bite-sized matchsticks
- **4 cups** Napa cabbage, shredded
- **2 cups** carrots, shredded
- **2 medium** scallions, finely sliced
- **½ cup** fresh cilantro, chopped
- **½ cup** chopped nuts, like almonds or peanuts, unsalted

DIRECTIONS

1. **Whisk** together all the dressing ingredients in a big bowl that is large enough to dress the salad in. TIP: If you put a little oil on the tablespoon, the honey and nut butter won't stick to it.
2. **Add** the kohlrabi, Napa cabbage, carrots and scallions to the bowl with the dressing.
3. **Set aside** a tablespoonful each of the cilantro and nuts to garnish the salad. Add the remaining ingredients to the bowl with the dressing.
4. **Toss to mix**, dressing the salad. Transfer the salad to a serving dish and garnish with the set aside cilantro and nuts.

NUTRITIONAL ANALYSIS
(per serving): calories 137, fat 9g, carbs 14.1g, fibre 3.5g, protein 4.5g, sugar 8.6g, sodium 117mg, potassium 470mg, vitamin A 118% (of recommended daily intake), vitamin C 60%, calcium 6%

Photos: Vera Asanin

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Super-Sizing Productivity

» BY EMILY FOLLETT-CAMPBELL

Much in the way that documentary filmmaker Morgan Spurlock's *Super Size Me* revealed the impact of a McDonald's diet, productivity enthusiast Chris Bailey's extreme productivity experiments reveal how mental, physical and social influences affect our productivity.

***Chris Bailey, productivity guru and author of* The Productivity Project**

Chris Bailey conducted a year of productivity experiments on himself from May 2013 to May 2014. A recent business school graduate, Bailey immersed himself in productivity research and interviewed productivity gurus from around the world to come up with his experiments, recording all of his findings in a blog. By the end of the year, his musings had been read over one million times by people from almost every country. He wrote a book about the experience, *The Productivity Project*, which became a bestseller. Now a productivity guru in his own right, he is a writer, coach, workshop facilitator and speaker.

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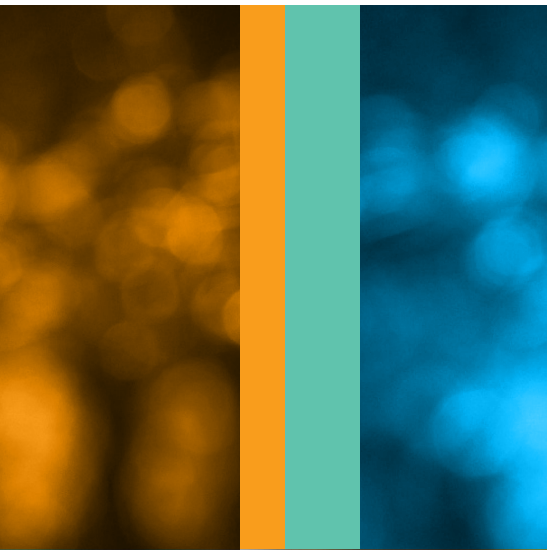

That is the thing about productivity advice—for all the time you spend reading about productivity, you have to earn that time back and then some.

Follett-Campbell: Why did you decide to do a year of productivity experiments on yourself originally?
Bailey: It is kind of weird, isn't it? The impetus for the project was that productivity has been a curiosity of mine for more than a decade. When I graduated university several years ago, I received three full-time job offers, but I thought if ever there was a time to explore something that I was naturally curious about, it was then. I declined the job offers to conduct a year of productivity experiments on myself. I looked at all the research on performance in a workplace-type environment and interviewed some of my favorite experts in the productivity space. It was really a burning curiosity that motivated me to start the project.

Why is productivity such an interesting subject for you?
I find it fascinating that we don't all accomplish the same amount throughout the day. We each get 24 hours to be productive and live a meaningful life. There are some people who seem to accomplish so much more in those hours. They are more focused, they have more energy, they work more deliberately and with intention. There are some of us who work on autopilot mode, and we're busy, but we accomplish very little. I think I have always been curious about this: what makes the most productive people tick?

Another part of it was that there is a lot of b.s. in the productivity space. There is advice that is fun to read about but that you don't necessarily earn that time back reading about. That is the thing about productivity advice—for all the time you spend reading about productivity, you have to earn that time back and then some. Otherwise, you are basically just looking at productivity porn, because it doesn't move your work forward in a meaningful fashion.

Are you a naturally productive person?
Because I have been steeped in these ideas for so long, I achieve what I intend more often than [others]. That is one of the ideas I settled into by the end of the project. The most productive people are not the ones who work on autopilot—they are the ones who work deliberately and with intention. I have definitely gotten better at managing my personal productivity since I started the project. I struggle like most people when it comes to getting all my stuff done throughout the day, but I think I manage okay.

What was the most challenging experiment that you conducted on yourself?
Anything related to food. There was one where my goal was to gain 10 pounds of muscle mass, while I lowered my body fat percentage from 17% down to 10%. I managed to gain 15 pounds of lean muscle by the end of that experiment, but my body fat was abysmal. I think I made it to 15% instead of 10%. It is because I love food so much. Any experiment that I failed, I pretty much failed because it involved food in some way.

In another experiment I consumed only Soylent for a week. It tastes disgusting, especially if you like food … Soylent is this powdered food substitute that has everything that our body nutritionally needs to sustain itself throughout the day. I think on day two or three, I was missing food so much … I stopped at a Burger King … and ordered the biggest Whopper they had.

How scientific are your experiments?
Not very scientific. I'm not in a laboratory. The experiment hooks people into an idea with a fun story and I can throw some research their way at the same time. Whenever I am doing one of these experiments, I am always diving deep into the studies surrounding that area to [understand] the science behind it. I share stories along the way of me experimenting with that science.

What is the strangest experiment you conducted on yourself?
They are all pretty strange.

Can you tell me about the time you lived like a caveman for a month?
That was a fun one. I slept on the floor. There is a weird subculture of people who

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sleep on the floor because they think it lets us get in touch with our evolutionary roots. I don't really buy that. I slept on the floor, I made sure that I walked five to nine miles every single day — which is what cavemen walked. I ate like a caveman — mostly vegetables, not much meat, no sugar and nothing refined. I had more energy after that experiment than I've had in a long time. It consumed a lot of time, because I had to upset all my daily habits and rituals to shoehorn this experiment into my life. At the same time, it provided evidence for the idea that our productivity is much more than just managing time. Our energy is a huge component to how much we accomplish over the course of the day. If we don't work out, if we eat garbage, if we don't consume enough water and if we don't get enough sleep, our productivity is often toast. Doing the simple things like recharging is pretty important.

Another experiment was using my smartphone for only an hour a day for three months. I have always been this person with his smartphone attached at the hip. I never go anywhere without it. At the start, it was hell being able to only use it for an hour a day. Eventually, I felt as though I kind of cleared a bend. A whole new expanse of focus, creativity and productivity opened up for me. This little rectangle in my pocket wasn't calling out for my attention through the day.

At the end of the productivity project, after stepping back and exploring everything I did, I came to the conclusion that every single thing that I experimented with that actually moved my work forward and allowed to me to accomplish more every day fell into one of three categories: managing my time, managing my attention and focus and managing my energy. I think all three ingredients are crucial.

Did any of the experiments stick? Were there any that you kept doing after they were over?

No, because they were all so extreme. There was a current that underlies the lessons that I uncovered from these experiments. It is the idea of intentionality — the intention behind our actions. Choosing what we spend our time on before we spend our time on it.

[In one of the experiments] I became a total slob for a week. I hardly showered, I ate a lot of junk food, I watched a ton of TV and my energy was gone as a result. It showed me that being a slob is fun to do every so often … if our intention for a given day is to sit back and relax that is fine, as long as it is our intention. [In another experiment, I drank] only water for a month. It showed me that drinking alcohol is essentially a way of borrowing energy and happiness from the next day. Similarity, caffeine is a way of borrowing energy from later on in the day when we experience that caffeine crash. That is okay, as long as we understand … there are costs and benefits associated with every action …. Becoming thoughtful about what we spend our time, energy and attention on in the first place is so essential.

Busyness is really no different from laziness when it doesn't lead us to accomplish anything.

You mentioned three things that improve productivity. If you had to pick three things that diminish your productivity the most, what would they be?

I would say anything that sucks us into working on autopilot. You see this a lot with the smartphones. Our smartphones wake us up, and immediately after we will notice a bunch of notifications, or that someone tagged us in a picture on Facebook. We will go check that out, then check our emails and then go check Instagram. We find ourselves in this kind of haze of distraction where we burn through 30 minutes of our lives that we will never get back. We don't spend that time in a meaningful fashion or with intention. The Internet is a candy store of distractions … which can be extraordinarily hazardous to our productivity. [Basically,] it is anything in our work that pulls us away from our intentions.

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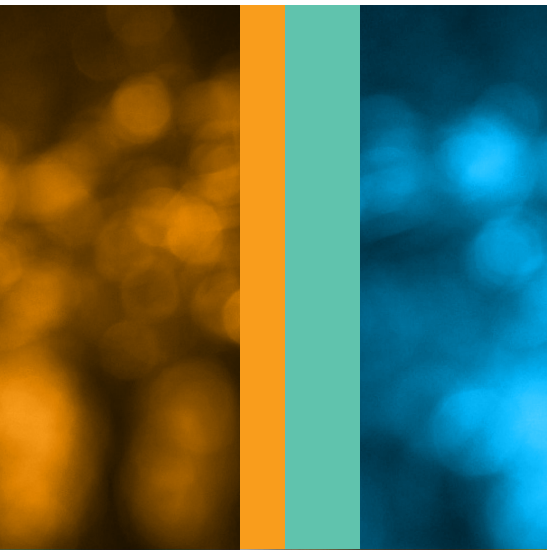

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Second — the busyness trap. If you walk up to anyone and ask them how they are doing, they will tell you that they are busy and have so much going on. When we say that we are busy, what we are essentially saying is that the world needs us quite a bit. It is us expressing how important we are. Busyness is really no different from laziness when it doesn't lead us to accomplish anything.

Our work tends to expand to fit how much time we have available for it. When we are on a deadline, we hardly ever check social media or keep on top of our emails. Chances are that those are shut off and we are focused on what is important.

When we are not on a deadline, when we have a bit less work to do, these tasks tend to expand to fill the rest of our time. We only do three, four or five hours of work throughout the day and the rest is busywork … Just because you are busy doesn't mean that you are productive. Especially when you define productivity as: a) how much you accomplished; and b) whether or not you accomplished what you intended to do in the first place.

The third mistake is that we want to make too many changes in our personal life. The idea of the change is very attractive on the surface. The process that we have to go through to implement the change is anything but attractive. I found this in my experiment to wake up at 5:30 every morning … I had the routine that productivity dreams are made of. I woke up at 5:30 to have a coffee, at 6:00 I went to the gym. I planned out my entire day while I was working out. I would get home and make a big healthy breakfast, shower and then meditate. I was disconnected from the Internet during this time.

Then I realized I absolutely hated the ritual but loved the idea of it. I had to go to bed in the evening when my friends wanted to hang out or when the hockey game was on. I had to totally disrupt my life in a way that I didn't enjoy. I think that speaks to a lot of the changes that we want to make. The idea of the change is always more attractive than what we have to do to make that change a reality.

This is the case for our productivity as well. A lot of us want to become vice-president at our company, and we want to have a six-pack by the summertime. In the moment, what we want to do is play hooky and grab a cheeseburger … I think when we are intending to do something, we have to consider what the process of actually accomplishing that thing will be like. We all want to become a world-class pianist but not many would want to go through the process of getting there. Considering the trade-offs in that regard is important too.

What do you think is the biggest mistake that employers make when they are trying to make their employees more productive?

I think focusing on how busy people are instead of how much employees actually accomplish. That is ultimately what productivity is. I define productivity as accomplishing what we intend to do. The productivity of a team is how much the team accomplishes.

It is so hard to measure our productivity when we do knowledge work for a living. We used to create widgets on an assembly line and do these repetitive-type tasks at work. In that sort of environment, it is very simple to measure someone's productivity. If person A makes 15 widgets in an hour and person B makes 30 widgets in an hour, person B is twice as productive. It is that simple.

When our work is more ambiguous and unstructured it becomes more of a challenge. If you have two programmers, programmer A writes 150 lines of code and programmer B writes 300 lines of code, programmer A could have been more productive. Maybe their program accomplished twice as much, had fewer bugs in it or solved problems that weren't called for in the first place … When work becomes more unstructured and ambiguous, we tend to look … to how busy we are as a proxy for how productive we are.

I have fallen into this trap too. If it was a really busy day, I would feel very productive. Then, I would look to how much I actually accomplished over the day to see how productive I was. I think this is something we have to start doing in

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team environments too. It doesn't matter how quickly someone responds to your email messages if they are ultimately not accomplishing what they are there to do.

What was the biggest lesson you learned about yourself doing this?
That I love food quite a bit. Whenever I fall into a routine where I am less productive, it is always because what I eat takes a tumble — I am not eating as healthy as I could be.

For about the entire time that I have been curious about productivity, I have been curious about meditation. At the start of the productivity project, I saw meditation as the antithesis of productivity. I viewed productivity as doing more and more, faster and faster. I viewed meditation as sitting there, observing my breath and not doing much at all. Then I stopped meditating entirely and I noticed several things started to happen. I became more distracted through the day and I couldn't focus as intently on what I was doing. The academic research I was pouring over became more tedious when I couldn't focus on it. I gained weight because I ate less intentionally … I worked more on autopilot mode and used all my devices more. Ultimately, I became busier while accomplishing less.

It was eye-opening. It speaks to this idea that when we think of the word "productivity" we think of something that feels cold and corporate — about efficiency and effectiveness. I realized after the experiment that nothing could be further from the truth. Productivity is accomplishing what we set out to do. If we intend to have a relaxing day on the beach and then we do, I would argue that we are perfectly productive in that scenario. The same is true if we intend to hire a new staff member, submit a report, mentor new employees and catch up on emails. If we accomplish these things I would argue that we are perfectly productive.

So it is not an issue of virtue versus vice?
Exactly. Productivity is achieving what we set out to do. [The lesson I learned was] that meditation wasn't the opposite of productivity. Productivity is about focusing, intention and achieving what we set out to do.

Are you still doing productivity experiments on yourself?
Yes, I am. Right now, I'm designing an experiment where I experience one hour of boredom every weekday and record my thoughts over the course of that time. I view boredom as something we … are so averse to. I have the idea that maybe that isn't necessarily right.

Do you ever let other people choose experiments for you?
Yes. A lot of the experiments that I do are suggested by my readers. They will email me some weird idea. I think becoming a slob and waking up early were suggested by readers. Often times I will start with something that I want to measure and work backwards to an experiment that will allow me to talk about the science behind it. As an example, I wanted to experiment with information retention: how things like meditation and taking breaks affect our focus, information retention and productivity. I decided to overwhelm my brain with information and watched 296 TED Talks over a course of a week … I start with something that I am curious about and work backwards to an experiment.

For how long do you think you will keep doing productivity experiments? Will you experiment on something else?
I think when you define productivity as accomplishing what you intend to do, there is so much that can get in the way of that. How much energy we have influences that. How well we can focus influences that. How we manage our time influences that. That is a lot to experiment with, everything from listening to music to living like a caveman.

I don't think I will run out of ideas soon … because [productivity] is not about how busy or responsive we are; it is about taking a more holistic approach and really observing everything that affects how much we accomplish over the course of the day. I think there are a lot of different things that you can experiment with in that context. YW

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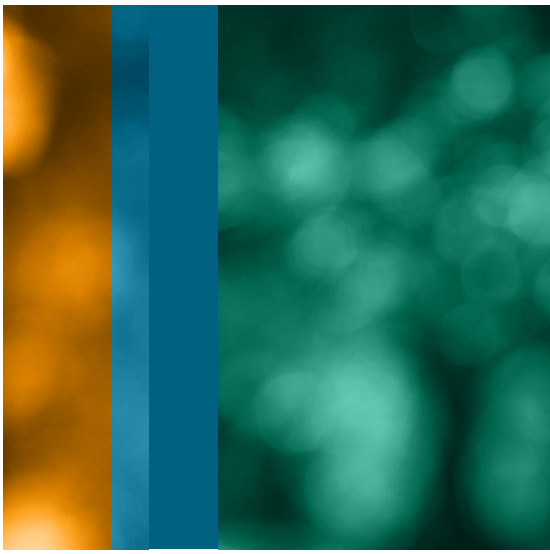

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