

SOCIAL MEDIA IN THE WORKPLACE

Individuals are increasingly using social media platforms to interact with the broader community. The irresponsible use of social media can have lasting effects on an employee's personal or professional character and the reputation of a business.

In a recent decision, the Fair Work Commission ("FWC") held that an employee who posted explicit comments about another employee on his personal Facebook page was fairly dismissed for serious misconduct. The Commission held that it was of no relevance that the comments were posted via the employee's home computer, on a personal website or outside working hours.

In a 2013 decision, the FWC held that an employee was fairly dismissed for serious misconduct where he posted on Facebook that he was going to 'sexually harass' a new employee. The employee argued that the dismissal was harsh because the comments had been made outside of work hours and his Facebook page had high privacy settings. In finding that the dismissal was fair, Deputy President Sams stated that even though the company had no social media policy that directly addressed the employee's actions, the conduct was so grossly offensive that it constituted a valid reason for dismissal.

Defining Social Media

Social media refers to content created by individuals using networking sites, video and photo sharing websites, micro-blogging sites, weblogs including corporate blogs, personal blogs or blogs hosted by traditional media publications, forums and discussion boards, wikis and online collaborations, podcasting, instant messaging or any other web sites that allow individual users or companies to use simple publishing tools.



Note: Popular networking sites, video and photo sharing websites, micro-blogging sites and media publications, forums and discussion boards include, but are not limited to, Facebook, LinkedIn, Tumblr, Flickr, Instagram, YouTube, Twitter, MySpace, Bebo, Friendster, Whirlpool, Yahoo! Groups, Google Groups and Wikipedia.

Social Media Policies in the Workplace

In order to safeguard the reputation of a business, it is important to incorporate a comprehensive policy addressing social media into the workplace that outlines and manages acceptable standards of use of social media platforms by employees. Such policies should include a structured framework of standards to adhere to when interacting within social media platforms. The policies should take into consideration an employees' right to privacy and freedom of expression.

Case law has suggested that a policy surrounding social media usage is imperative for the protection of business interests. In a 2011 decision, the FWC held that an employee who was summarily dismissed for serious misconduct as a result of derogatory comments that he posted on his Facebook profile about his employer was unfairly dismissed. The Commission stated that while the conduct may have constituted serious misconduct, the lack of policy in the electronic environment was insufficient and the termination was deemed to be harsh.

Primarily, a social media policy should address the personal and professional use of social media platforms and ensure that individuals who engage in such activity do not:

- > negatively impact the businesses reputation;
- > compromise efficient and effective output during business hours;
- > suggest that the business endorses any personal views; or
- > disclose confidential information concerning the company without prior authorisation.

Where postings and publications on social media have the potential to damage the employment relationship, the organisation's interests, or when it is incompatible with an individual's duties as an employee, the employee will be deemed to be personally accountable for their actions, allowing disciplinary processes to be applied by the business.

Risks associated with social media

There are a number of risks associated with social media activity, including, but not limited to:

- > breaches of a businesses' values;
- > plagiarising or breaching copyright and intellectual property conditions when using material;
- > causing injury to another person's, organisation's, association or company's reputation;
- > defaming or offending another person(s);
- > bringing the businesses brand or reputation into disrepute;
- > representing a personal political view as that of the business;
- > representing themselves as someone else within the business;
- > making statements regarding the businesses operation that are incorrect;
- > disclosing personal information relating to the businesses employees or users, or official information which is classified or commercial-in-confidence; and
- > posting material that may be offensive or obscene and infringe relevant online classification laws.

The Victorian Chamber says:

In order to safeguard businesses, employers should:

- > develop and implement a comprehensive policy;
- > outline expectations and train employees;
- > act promptly in response to suspected breaches;
- > investigate breaches thoroughly;
- > closely examine the communications connection with the workplace;
- > consider the employee's response; and
- > weigh up the contravention against other relevant factors in deciding whether dismissal is warranted.

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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