

## THE IMPORTANCE OF A SOCIAL MEDIA POLICY IN THE WORKPLACE

Several recent unfair dismissal cases highlight the importance for businesses to establish clear policies regarding social media use, including the use of personal social media accounts outside work hours.

### The Case and Outcome

In the case of *Glen Stutsel v Linfox Australia Pty Ltd*,<sup>1</sup> an employee was dismissed on the basis of serious misconduct after using his personal Facebook account to criticise management in his workplace. He used language which was deemed inappropriate and offensive. According to the employee, to his knowledge the Facebook account settings were set to 'private', meaning the comments were only intended to be read by a select group of Facebook 'friends'.

The Fair Work Australia tribunal ordered reinstatement of Mr Stutsel and back pay for the time he had not been working. Commissioner Roberts reasoned that although the comments were "foolish", they were not intended for the public to read, and therefore, the termination was considered harsh, unjust or unreasonable.

### How was the decision justified?

Linfox's failure to implement a social media policy meant there were insufficient grounds for dismissal. The tribunal stated that in "the current electronic age", employers must implement a social media code of conduct, or the business will face damaging their reputation.

The major points from the decision include the following:

- The company had no social media policy, which left it with no leg to stand on, so to speak;

- The comments didn't contain any credible threats towards the employer and were intended for a private forum;
- Some of the adverse comments on Mr Stutsel's Facebook page were made by other Linfox employees;
- Mr Stutsel displayed a genuine ignorance and lack of understanding about Facebook's functions and its technicalities.

### Implementing a social media policy

An effective social media policy can help to regulate employees' activities outside the workplace. Such standards must reflect the business culture and be designed to mitigate risks involved with online social behaviours. In *Pearson v Linfox Australia Pty Ltd*,<sup>2</sup> the Fair Work Commission provided direction as to when social media policies can validly regulate employee's online behaviour, and how they could be enforced.

In this instance, the Commissioner accepted that a workplace social media policy could in fact apply outside of work hours, as "it is difficult to see how a social media policy designed to protect an employer's reputation and security of the business could operate in an 'at work' context only".

Employers who seek to enforce their social media policy outside the workplace must ensure such provisions go no further than to protect the reputation and security of the business. The business policy should clearly set out the expectations of the employees.

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<sup>1</sup> *Stutsel v Linfox Australia Pty Ltd* [2011] FWA 8444

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<sup>2</sup> *Pearson v Linfox Australia Pty Ltd* [2014] FWC 446

## **Balancing employee's interests**

It is important to develop a balanced policy whereby an individual's right to privacy is respected. A comprehensive rule covering any and all use of social media, both during and outside of work hours, would be inappropriate and impractical.

Employees must be reminded that all comments and posts made on social media have the potential to be distributed and viewed by a much broader audience than initially intended.

## **Steps to implement a social media policy in the workplace**

A clear social media policy can help to regulate employees' social media activities regarding their employment outside the workplace. The policy must reflect the business culture and be designed to minimise risks such as "bad mouthing" your employer or workplace online. Employers who seek to enforce their social media policy outside the workplace must ensure such provisions go no further than to protect the reputation and security of the business. The policy must be reasonable.

### **1. Define 'social media'.**

Ensure the scope of your policy is not inadvertently narrowed; cover all types of social media including Facebook, LinkedIn, Twitter, YouTube, blogs and other channels which allow individuals to post images, comments, videos. Keep in mind social media is continually changing and new channels are introduced often.

### **2. List behaviours that are acceptable**

Depending on the industry and workplace, appropriate decorum may involve limited or no access to social media during the work day. However, it would be fair if an employee logged in to their Facebook account during a lunch break, whether that be on their work computer or another personal device such as a phone or tablet.

### **3. Clearly define conduct that is unacceptable**

Inappropriate behaviour may include comments which could be interpreted as offensive or critical, or those which result in damage to the employer's reputation. Additionally, breaches of contract or fiduciary duties such as disclosure of confidential information and misuse of intellectual property.

### **4. State the consequences of breaching the policy**

The disciplinary process of the business should be effective, regularly reviewed, and available in writing for all staff. If the policy is breached, such methods must be followed accordingly. Employees should also be reminded that if a serious breach occurs, termination of employment is a potential consequence.

### **What next?**

Once a workplace policy has been developed, it is important to periodically review and update this policy in order to adapt to the ever-changing social media landscape. Training employees is essential, to keep them up-to-date with workplace policies will help to manage risks and will also offer the employer an avenue of recourse where employees fail to meet behavioural standards.

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