



PROACTIVE COMPLAINTS MANAGEMENT

TRAINING • COACHING • CASE MANAGEMENT



Social Media what you should know

What is Social Media?

“Social media is the social interaction among people in which they create, share or exchange information, ideas and pictures, video in virtual communities and networks”

Source Wikipedia

What currently are the most popular types of Social Media platforms?

- Facebook
- Twitter
- LinkedIn
- Instagram
- Flickr
- YouTube

Social media and your staff

Social media in the workplace requires strict control via the use of effective and lawful policies to ensure that damage does not occur to an individual or your organisation.

Staff will need to be made aware of the policy inclusive of training on expectations of the policies existence.

It should be noted and staff made aware that your organisations social media does extend beyond an employee's ordinary working hours and into their private time.

Case Study - O'Keefe v William Muir's Pty Ltd T/A Troy Williams the Good Guys (2011)

As the Fair Work Commission decision of O'Keefe v William Muir's Pty Ltd T/A Troy Williams The Good Guys [2011] FWA 5311 demonstrates, a sufficient connection between online conduct and the workplace can be established even when social media is not being used to represent the business, and even when it does not involve an employer's computer systems.

The Facts

O'Keefe had been employed by a Good Guys store in Townsville since 2006. In May 2010, he posted an offensive "status update" on his Facebook page about an employee he alleged had made an error with his commission, further stating that the person responsible would be "going down tomorrow".

In a meeting with his employer, O'Keefe admitted that he had been referring to a particular female employee responsible for handling pay in his Facebook post.

Finding that O'Keefe's post used unacceptable language to refer to a co-worker, and that "going down tomorrow" constituted a threat, the director dismissed him for serious misconduct.

O'Keefe lodged a claim for unfair dismissal. He claimed that his Facebook page was set to the maximum privacy setting, and only a select group of friends could see what he had written. Furthermore, he did not mention or affiliate himself to his employer anywhere on his Facebook page.

He asserted that in light of this, his dismissal was harsh, unjust and unreasonable.

Under cross-examination, O'Keefe admitted that about 11 of his co-workers who were also "Facebook friends" would have been able to view the post.

The Decision

The FWC found that although the employer did not have a specific Social Media policy, it had detailed policies on sexual harassment and workplace bullying. The employer's Employee Handbook further stated that workers "will not use offensive language, resort to personal abuse, or threaten to engage in physical contact".

Finding that O'Keefe was aware of these policies, the FWC held that the fact that the comments were made from a home computer outside of work hours made no difference, particularly since they were made in the (online) presence of other employees. It also noted and endorsed the employer's submission that "the separation between home and work is now less pronounced than it once used to be".

Additionally, O'Keefe had a number of more appropriate avenues he could have taken to resolve his allegation, including speaking to his employer informally, invoking his contract's dispute settling procedure, or complaining to the Fair Work Ombudsman. His application for unfair dismissal was itself dismissed.

What Does This Mean For You?

This case demonstrates that the relevant connection between a policy regulating an employee's use of social media and his or her employment can also arise from the policies any employer should have in place to cover their liability for workplace bullying, unlawful discrimination or sexual harassment.

In other words, many actions that would constitute threatening or unwanted behavior in person in real life will also amount to threatening or unwanted behaviour online. An employee in O'Keefe's situation would not be able to point to the absence of a workplace social media policy and plead ignorance for serious misconduct that other policies already clearly prohibited.

But a social media policy will still capture and manage behavior other policies cannot. The O'Keefe decision can be contrasted with Linfox Australia Pty Ltd v Stutsel [2012] FWA 7097, in which an older worker successfully claimed ignorance as to the effect and reach of Facebook posts he made that denigrated his managers and supervisors.

In that case, the FWC observed that without a social media policy and accompanying training and induction, they would be inclined to give an employee's claims of ignorance the benefit of the doubt.

The most serious misconduct will be grounds for dismissal whether it happens online or not. But a social media policy remains essential for those grey areas, especially for what happens 'after hours'.

<http://www.employmentlawhandbook.com.au/insider/issue-2/#caseStudyAnchor>

For further information in regards to Social Media policies and training on the use of Social Media please contact Steve Aivaliotis at steve@proactivecm.com.au or mobile +61 418 313 303.