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Why do you need this document?

This Policy can be used by all Australian employers and is designed as a guideline intended to provide clarity to employees and contractors on acceptable use of social media platforms when referring to the employer, the employer's products and services, its people, clients, competitors and entities associated with the employer (regardless of whether the devices are owned or controlled by the employer).

The use of social networking sites in the workplace continues to present legal issues. In particular, there has been an increase in cases concerning termination of employment where there is a blurred distinction between work and 'private' activities.

Related documents

- Code of Conduct

1. Is posting offensive material on social media grounds for dismissal?

Yes, there have now been a number of cases (and growing) where employers have dismissed employees for their posts on social media.

Example: The Full Bench of (then) Fair Work Australia found that the posting of derogatory, offensive and discriminatory statements or comments about managers or other employees on Facebook might provide a valid reason for termination of employment. In each case, the enquiry will be as to the nature of the comments and statements made and how widely they have been published. Although cases in this area largely turn on their own facts, this decision underscores that a targeted up-to-date and consistently applied policy is critically important when considering disciplinary action against employees for inappropriate use of social media policy and selective application of its disciplinary policy to be particularly relevant. See *Linfox Australia Pty Ltd v Stutsel* [2012] FWAFB 7097.

2. Is an employer's social media policy able to apply 'beyond work'?

Yes, the Fair Work Commission found that it is legitimate for an employer to establish a social media policy that applies beyond an employee's activities 'at work' in order to protect its reputation and the security of its business.

In this case, the Commission stated: "Gone is the time (if it ever existed) where an employee might claim posts on social media are intended to be for private consumption only...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".

The Commission held that the employer had a valid reason for the dismissal given the employee's repeated policy breaches, the evidence that the employer's policies were clear and understood, the employee having been put on notice about the consequences of further breaches and the legitimacy of requesting an employee to acknowledge the employer's social media policy. See *Pearson v Linfox Australia Pty Ltd* [2014] FWC 446.

Facebook use by employees

Fair Work Australia determined in a matter that “a Facebook posting, while initially undertaken outside working hours, does not stop once work recommences. It remains on Facebook until removed, for anyone with permission to access the site to see... It would be foolish of employees to think they may say as they wish on their Facebook page with total immunity from any consequences.

A Facebook entry could be considered in similar manner to the principle applied under ‘out of working hours conduct’. However, it should be noted that the employee’s dismissal in this matter was considered to be harsh, unjust or unreasonable. See *Fitzgerald v Dianne Smith T/A Escape Hair Design* [2010] FWA 7358.

The Fair Work Commission made an order to stop bullying based on repeated unreasonable behaviour over an extended period of time. This behaviour included:

- belittling and humiliating the employee by acting in an aggressive and rude manner
- speaking abruptly to the employee and treating her differently to other employees
- making unreasonable comments to the employee
- defriending the employee on **Facebook** after this meeting.

See *Roberts v View Launceston Pty Ltd* [2015] FWC 6556.

Getting it wrong

An employer who is in doubt about the correct answer to the question of “Does my workplace need a social media policy?” should know the answer is a definite “Yes”.

A commonly expressed view, including that of the Fair Work Commission, is the probability of an employee doing something stupid (or at least, of an employee doing something stupid and posting the evidence on social media channels) is inversely proportional to the employee’s understanding of the consequences of that action.

Having a social media policy will assist the employer in defending a claim for unfair dismissal if the employee is dismissed for (say) using derogatory remarks about the employer on social media. It will also communicate to employees that such behaviour is not acceptable when it affects the employment relationship.

Example: The Commission reinstated an employee who had been dismissed for material which he posted on Facebook. The Commission noted the employer did not have a social media policy, but relied on its induction training and handbook. The employee wrongly thought the material being posted was private. The original decision was confirmed on appeal to a Full Bench of the Fair Work Commission. See *Linfox Australia Pty Ltd v Stutsel* [2012] FWAFB 7097 (3 October 2012).

General Information

Examples of social media include blogs, discussion forums and boards, Facebook, Twitter, LinkedIn, YouTube, and any other medium which allows a user to upload electronic communication and content.

The Policy is designed as a guideline intended to provide clarity to employees and contractors on acceptable use of social media platforms when referring to the employer, the employer’s products and services, its people, clients, competitors and entities associated with the employer (regardless of whether the devices are owned or controlled by the employer). Importantly, this Policy is not limited to the use of social media platforms on computers and other electronic devices provided by the

employer, but also includes activity undertaken on an employee's personal computer and electronic device.

The Policy has been updated to include the use of social media on the company's computer network for limited and reasonable personal use. If employee's use the company's computer network for personal use they will need to be mindful that any information they disclose may be used or disclosed and the employee is taken to have consented to the use and disclosure for any information that is disclosed.

Any breach of the Policy may result in disciplinary action including termination of employment. Please note that this Policy should be used in conjunction with the Internet, Email and Computer Use Policy, particularly if the State or Territory in which you operate has laws which regulate an employer's ability to monitor the computer use of its employees. For instance, in New South Wales workplace surveillance is regulated by the *Workplace Surveillance Act 2005 (NSW)* (**Workplace Surveillance Act**). The Workplace Surveillance Act prescribes that an employer must not prevent an employee accessing a website unless it is acting in accordance with a workplace policy that has been notified in advance to employees in such a manner that it is reasonable to assume that the employees are aware of and understand the policy. If you have any questions about this matter you should seek specific legal advice.

How to complete this template

Designed to be customised

It is completely customisable based on your specific requirements.

Include what you must and can comply with

This document should be used in conjunction with your contract of employment, and any specific company procedures and processes. Only include the commitments you are confident you can comply with, make sure you update and review the document regularly.

Important: You may have legal obligations to your employees under an employment or industrial agreement such as an award, workplace agreement or employment contract. Make absolutely certain what's written in this document is consistent with these. If you're unsure what covers your employees, ACFA Members can contact ACFA's workplace advice team on 1300 342 248 or on 02 4340 2000 for further advice/assistance.

To complete the template:

1. Using Word's Replace function, search for (INSERT COMPANY NAME) and replace with your company name.
2. Replace (items in brackets) with your own wording.
3. Once you have finished work on the template, delete the introduction/explanation page/s of the document.
4. Update page numbers.

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Social Media Policy

1. Social Media Policy

1.1 The Social Media Policy ('Policy') relates to (insert company name) and, where relevant, operates in conjunction with the Internet, Email and Computer Use Policy and the Contract of Employment or contract for service.

2. Commencement of Policy

2.1 This Policy will commence from XX/XX/XXXX. It replaces all other policies, if any, relating to access to social media platforms and social networking sites (whether written or not).

3. Scope

3.1 The Policy relates to all full-time, part-time and casual employees of (insert company name), as well as contractors, temporaries and subcontractors working for or on behalf of either a company or any associated companies in the (insert company name).

3.2 The Policy also applies to (insert company name) employees and (insert company name) Contractors' participation in social media inside or outside of any (insert company name) workplace and includes use of a Contractor's or an Employee's own device.

3.3 The Policy does not form part of any contract of employment with (insert company name). Nor does it form part of any contract for service with (insert company name).

4. Definitions

4.1 In this Policy:

- a) **'Blogging'** means the act of using web log or 'blog'. A blog is a frequently updated website featuring diary-style commentary, audio-visual material and links to articles on other websites.
- b) **'Confidential Information'** includes but is not limited to trade secrets of (insert company name); non-public information about the organisation and affairs of (insert company name) such as: pricing information such as internal cost and pricing rates, production scheduling software, special supply information; marketing or strategy plans; exclusive supply agreements or arrangements; commercial and business plans; commission structures; contractual arrangements with third parties; tender policies and arrangements; financial information and data; sales and training materials; technical data; schematics; proposals and intentions; designs; policies and procedures documents; concepts not reduced to material form; information which is personal information for the purposes of privacy law; and all other information obtained from (insert company name) or obtained in the course of working or providing services to (insert company name) that is by its nature confidential.
- c) **'Computer'** includes all laptop computers and desk top computers.

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