

EMPLOYMENT LAW FOCUS

Social Media Policies are a Must in the Workplace

Problems related to social media use in the workplace are increasing. Employers should have a social media policy in place to ensure problems can be dealt with in a safe and fair manner.

The use of social media sites such as Facebook and LinkedIn have dramatically changed the way we live. In the old days, when friends and family moved overseas they really were 'gone' save for the occasional letter or an expensive phone call in the middle of the night. These days, the ability to interact with anyone anywhere on sites such as Facebook enables absent friends to play a very active part in our daily lives.

LinkedIn has also had a sizeable impact on the way we meet, network and collaborate. There are

reportedly some 277 million LinkedIn users worldwide which increases at the rate of two new members per second. According to LinkedIn, New Zealand hit the one million member mark in late 2013 which equates to 22.5% of the total population.

Companies have embraced the benefits of social media sites as a cost-effective platform for marketing products, pushing brands and hiring talent. However, for companies there can be a down side to such pervasive social media use.

PRĀCTICA LEGAL

- Employment Agreements
- Personal Grievance Claims
- Medical Incapacity
- Performance Management
- Dispute Resolution
- Court Representation

Phone: (07) 839 6449 Mob: 027 459 3375
PO Box 150
HAMILTON 3240
Website: www.practiclegal.co.nz

email: info@practiclegal.co.nz

The last five to ten years have seen many companies struggle to keep employees off social network sites and focused on their work. The use of smart phones means that blocking certain sites in the workplace is no longer effective when employees can still access the sites from their phone.

The issues employers are dealing with include loss of productivity during work hours due to personal internet use, defamatory comments on social media sites which may bring the company's name into disrepute, cyber-bullying between employees, and breach of company confidential information.

There is an interesting tension between an employee's right to say and do what they like in their own time and an employer's right to protect their reputation, employees and clients from the damaging effects of an employee's after-hours conduct or comments. An employee's claim that their privacy settings can render their Facebook profile a private forum is questionable given that comments are made in a written, enduring form. Whether a posting that is *only* seen by 200 Facebook friends really can be considered 'private' is likewise, debatable. The poster also has little, if any, control over how the post is used by others once it has been posted.

It is a well-established employment law principle that an employee can be disciplined for conduct outside of work provided there is a nexus

between the conduct and the employment relationship. In the case of *Hook v Stream Group (NZ) Pty Limited* [2013] Judge Inglis in the Employment Court summed up the Court's attitude to Facebook postings by stating *The reality is that comments made on virtual social networks can readily permeate into real-life networks. Facebook posts have a permanence and potential audience that casual conversations around the water cooler at work or at an after-hours social gathering do not.*

Whether an employee can be dismissed for their online conduct depends on the facts of each case, the fairness of the employer's process and whether dismissal is a justifiable outcome for the employee's conduct. The 2012 case of *Stutsel v Linfox* in Australia saw a truck driver reinstated following his dismissal for offensive comments posted on Facebook. Fair Work Australia (the equivalent to our Employment Relations Authority) was highly critical of the employer for not having a social media policy in place. There are indications, however, that since that case the courts are increasingly holding employees responsible for their online conduct, whether or not a social media policy is in place.

Despite this, having a social media policy will provide considerable strength to an employer's position should a dismissal be challenged. In its most basic form, the policy needs to clearly state what online conduct is unacceptable to the

employer and what the outcomes will be for anyone found to be in breach of the policy.

Employers should remember that when introducing any new policy which potentially limits an employee's rights, a draft policy should first be sent out to all employees and adequate opportunity should be given for staff to provide suggestions and feedback prior to the putting any policy into effect.

© Erin Burke 2014

For further information on social media policies in the workplace please contact:

erin@practicallegal.co.nz

A version of this article was first published in the Waikato Business News in March 2014.

PRĀCTICA LEGAL

- Employment Agreements
- Personal Grievance Claims
- Medical Incapacity
- Performance Management
- Dispute Resolution
- Court Representation

Phone: (07) 839 6449 Mob: 027 459 3375

PO Box 150

HAMILTON 3240

Website: www.practicallegal.co.nz

email: info@practicallegal.co.nz