

This time last year Harwood Andrews wrote about the perils of social media in the workplace. Back then, many businesses had a limited understanding of how an employee's private use of online social media sites could have an adverse effect on the business's brand, reputation and even generate internal workplace disputes between employees. There has also been a noticeable increase in employees being dismissed from their employment following inappropriate use of social media, even if the conduct occurred in the employee's own time.

Last year's article referred to the dismissal of a hairdresser who was terminated by her employer after she posted a comment on her Facebook page which related to grievances about her job. In this case, the dismissal was held to be harsh and unreasonable on the basis that the employee's comments merely reflected her dissatisfaction with the hairdressing industry and did not directly relate to her employer.

Recently, an employer's dismissal of an employee for comments made on the employee's Facebook page has further demonstrated how an employee's conduct outside of work hours can lead to the dismissal of his or her employment. In this particular case, an employee of the Good Guys franchise in Queensland was terminated for serious misconduct after he posted the following comment on his Facebook page:

"Wonders how the f--k work can be so f--king useless and mess up my pay again. C--ts are going down tomorrow."

The employee challenged the dismissal and argued that his Facebook page was only able to be read by 70 of his Facebook friends due to his privacy settings. A key flaw in the employee's claim was that his Facebook friends included co-workers and subsequently the comments were relayed back to the employee's superiors who notified the franchise's director and the employee was then dismissed.

Fair Work Australia upheld the employee's dismissal on the basis that the employee's outburst was not excused by the fact it was made on his home computer and outside of work hours. Plainly, the turning issue was that the employee's comments were read by fellow employees and that it could not be accepted the employee would be unaware of the consequences of his actions in these circumstances.

Fair Work Australia was also particularly concerned about the threatening nature of the employee's comments and considered that the employer was justified in terminating the employee's employment.

Deputy President Swan stated that, "The separation between home and work is now less pronounced than it once used to be."

The employee's comments did not specifically name his employer however it was held that the comments were clearly directed against his employer, whereas the hairdresser's comments referred to above were deemed more broadly to be a passing shot at the hairdressing industry in general.

This decision reaffirms the developing principle that an employee's actions outside of the workplace can directly affect his or her employment. Employers ought to have well drafted social media policies which clearly set out the limits of social media in the workplace as well as the consequences to employees of inappropriate use of social media which could impact on the workplace and the employer.

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