

## After hours conduct on Facebook a reason for dismissal

### Workplace Relations Update

#### O'Keefe v William Muir's Pty Ltd T/A Troy Williams The Good Guys

The evolution of social media and its impact on the workplace have been blurring the lines between work and home and presenting new issues for employers to manage.

In a recent decision Fair Work Australia has held that comments made by employees on Facebook can provide valid grounds for dismissal, even where those comments are made on a home computer and outside of working hours.

#### The facts

In *O'Keefe v William Muir's Pty Ltd T/A Troy Williams The Good Guys*, Mr O'Keefe was dismissed after he made offensive and threatening comments on his Facebook account targeted at another of The Good Guys' employees. Venting about a pay dispute, Mr O'Keefe posted on his facebook page the following statement:

*"Damien O'Keefe wonders how the \*\*\*\* work can be so \*\*\*\*ing useless and mess up my pay again. \*\*\*\*s are going down tomorrow"*

The Good Guys took issue with the fact that Mr O'Keefe had publically denigrated a female colleague using a profanity and that it believed the last comment constituted a threat to the female colleague.

When Mr O'Keefe came into work the day after posting the comments, he spoke to Mr Williams, a Director of The Good Guys, and when questioned admitted that the comments had been directed at the female colleague. Mr Williams told Mr O'Keefe that he considered the online comments a resignation and that his employment was terminated.

#### Who does this affect?

- Company directors
- Employees
- Insurers
- HR Managers

#### Article Highlights

- Fair Work Australia has stated that work related and inappropriate social media comments, made outside working hours and on a home computer, may be valid grounds for dismissal.
- It is imperative for employers to have clear social media policy that is both distributed and implemented vigilantly in order to avoid costly and disruptive court proceedings and possible unfair dismissal claims.



### The finding

Before Fair Work Australia Mr O'Keefe claimed that the comments were made because he was angry at not being paid his commission entitlements, and that his comments on Facebook were not intended to be seen by the female colleague (who was responsible for processing pays). Mr O'Keefe also said in his defence that his Facebook account was set to the maximum privacy setting, that the comment he had posted made no reference to The Good Guys, and that only a select group of 70 friends could see what he had written.

Despite the fact that the female colleague could not see the comments (because he had blocked her access earlier that day), there were other work colleagues on Mr O'Keefe's Facebook group who could, and some of whom in fact did, see the comments and reported those comments back to the female colleague.

The Good Guys had an employee handbook and detailed policies that advised employees that they were prohibited from using offensive language and threatening others and in light of this Fair Work Australia found it *"difficult to accept that the applicant was unaware of the consequences of his actions"*.

Interestingly, Fair Work Australia noted that even in the absence of the employee handbook or similar policies, *"common sense would dictate that one could not write and therefore publish insulting and threatening comments about another employee in the manner in which this occurred"*.

Fair Work Australia found that an employee's use of social networking sites at home and outside of working hours can amount to misconduct justifying dismissal. In particular, *"the fact that the comments were made on the applicant's home computer, out of work hours, does not make any difference. The comments were read by work colleagues and it was not long before [the female colleague] was advised of what had occurred ... the separation between home and work is now less pronounced than it once used to be"*.

In light of this Fair Work Australia found that Mr O'Keefe's use of insulting and objectionable language, together with threatening another employee, amounted to serious misconduct and that The Good Guys had been justified in dismissing him.

### After hours conduct as a reason for dismissal

This case should not be seen as condoning dismissals for after hours conduct. Generally speaking, after hours conduct will only justify disciplinary action if it is closely linked to the employment relationship.

Here, the fact that other employees were Facebook "friends" was a sufficient link. It is difficult to say whether the same comments made to fellow employees at a pub would be viewed in the same light.

What is clear, however, is that social media sites are starting to become an issue

### Contact



**Stephen Kemp**  
PARTNER

t: +61 8 9426 6633  
e: skemp@jacmac.com.au



**Joanne Alilovic**  
SENIOR ASSOCIATE

t: +61 8 9426 6794  
e: jalilovic@jacmac.com.au



**Renae Harding**  
SENIOR ASSOCIATE

t: +61 8 9426 6802  
e: rharding@jacmac.com.au



in the workplace that can no longer simply be ignored. Of most concern is the fact that social media sites make opportunities for “cyber bullying” more readily available.

### **Appropriate social media policies**

Employers should ensure that they have policies in place addressing the issues with social media sites and ensure that those policies are distributed and implemented within the workplace. Employers should remind employees that unacceptable use, even outside the workplace, may result in disciplinary action and in some circumstances termination of employment.

*Disclaimer: This publication is intended to provide general information only and should not be relied upon as legal advice. If you require legal advice on a matter please contact us.*

### **Contact Us**

**t** +61 8 9426 6611 **f** +61 8 9321 2002 **e** [jacmac@jacmac.com.au](mailto:jacmac@jacmac.com.au)

**a** Level 25, 140 St Georges Terrace, Perth, Western Australia 6000  
GPO Box M971, Perth, Western Australia 6843

**[www.jacmac.com.au](http://www.jacmac.com.au)**