

Facebook sacking upheld by Fair Work Australia

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The growth in the use of social media continues to present difficulties for employers in managing their employees' social media activities. This is especially the case when managing reputational damage that may be caused by an employee's social media activities outside of working hours. In a well publicised decision, Fair Work Australia has recently upheld an employer's decision to dismiss a retail worker for his facebook tirade.

What happened?

In this case, the employee had worked for a large retail chain for more than three years. From 1 January 2010, the employee's role changed so that he worked under a different commission structure. For three periods of around four weeks between January and May 2010, the employer did not pay the employee his correct commissions. On the first two occasions, the non-payment was rectified. However, after exchanging emails with the operations manager who was responsible for paying commissions, and having discussions with her, the employee became frustrated in relation to the third occasion for which the non-payment had not been rectified. One night at home, the employee posted a facebook status update reading:

[the employee] 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 had about 70 facebook friends, and around 11 of these were work colleagues. The employer was subsequently informed about what had been posted on facebook by one of the work colleagues, and the employer formed the view that the post breached its policies and procedures, and constituted a threat to the operations manager.

When the employee attended for work the next day, he had a meeting with his manager to discuss the facebook post. The employer ultimately dismissed the employee and provided him with three weeks' pay in lieu of notice – despite the fact that the employer alleged the employee had engaged in serious misconduct, and the employee applied to Fair Work Australia for an unfair dismissal remedy.

What did Fair Work Australia find?

In considering the employee's application for an unfair dismissal remedy, a senior member of Fair Work Australia stated:

The fact that the comments were made on the [employee'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 operations manager] was advised of what had occurred. The [employer] has rightly submitted, in my view, that the separation between home and work is now less pronounced than it once used to be.

Fair Work Australia considered the fact that the employer did not have a specific policy dealing with an employee's social media activities outside of work. Despite the lack of a policy however, the employer was able to rely on other policies dealing with harassment and bullying to support its decision to dismiss the employee.

Fair Work Australia ultimately found that the employer was justified in dismissing the employee for his facebook post, despite his frustrations in relation to pay issues, as the post demonstrated that the employee had complete disrespect and disregard for the operations manager, and it constituted a threat to the operations manager.

Key lessons for employers

This case highlights that an employee's conduct out of work, including through social media platforms, can have a material impact on the employer's business. As such, in some circumstances, this conduct can be used to justify the dismissal of an employee.

Employers should take steps to ensure that, as far as possible, they are protecting their business, brand and reputation by putting in place reasonable policies and procedures dealing with an employee's use of social media which may have an impact on the employer's business. Doing so will not only assist to avert damage to the employer's business, it will also assist to demonstrate that employees are aware of their obligations in relation to social media activities if problems arise in the future.