



# Blurred Lines Social Media as a Workplace Risk

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# Social Media as a Workplace Risk

1. What is “*social media*”?
2. Setting the boundaries
3. Social media policies **inside** the workplace
4. Social media use **outside** workhours
5. Managing inappropriate social media conduct
6. Discrimination and social media
7. Work Health and Safety implications
8. Conclusion and questions

# What is Social Media?

*“the online media used for social networking, especially sites which facilitate emailing, blogging, etc.”* – Macquarie Encyclopedic Dictionary

- AOL – Six Degrees – MSN Messenger
- Facebook, LinkedIn, Twitter, Pinterest, MySpace, Google Plus+, Reddit, YouTube, Flickr, WhatsApp, etc.
- Virtual Reality and Augmented Reality – What’s the future of Social Media?

# Setting the Boundaries

- Inside the workplace v outside the workplace
  - [Nick Kolodjashnij v Lion Nathan t/as J Boag and Son Brewing Pty Ltd \[2009\] AIRC 893](#)

“An employer is entitled to have policies designed to protect the interests of the business and a legitimate interest in ensuring that such policies are observed by the workforce. There would be little point in having policies that were not enforced. While not every policy adopted by an employer will necessarily be found to be reasonable, particularly in circumstances where that policy purports to constrain the activities of employees outside working hours, some such policies will have the necessary connection to the workplace to be upheld. Where the employer can make out a legitimate interest in the conduct of its employees outside work hours, a policy aimed at regulating that conduct and protecting the employer’s legitimate interests will generally be found to be reasonable.”

# Setting the Boundaries

- [\*Fitzgerald v Dianna Smith t/as Escape Hair Design\* \[2010\] FWA 7358](#)

“Postings on Facebook and the general use of social networking sites by individuals to display their displeasure with their employer or a co-worker are becoming more common. What might previously have been a grumble about their employer over a coffee or drinks with friends has turned into a posting on a website that, in some cases, may be seen by an unlimited number of people. Posting comments about an employer on a website (Facebook) that can be seen by an uncontrollable number of people is no longer a private matter but a public comment.”

“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. A Facebook posting comes within the scope of a *Rose v Telstra* consideration but may go further. It would be foolish of employees to think they may say as they wish on their Facebook page with total immunity from any consequences.”

# Setting the Boundaries

1. Employers can regulate the conduct of their employees outside of the workplace, provided they have a legitimate interest in doing so.
2. Be clear about your policy on:
  - i. Employees identifying their employment on social media;
  - ii. Using their employers name, branding, etc. on social media; and
  - iii. Discussing their employment on social media.
3. If the social media account is not owned by the Employer, treat it as “out of the workplace conduct”.
4. Be clear about policy on using Employer’s property to access social media.



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FX's Mutant TV Spin-Off Legion May Be Crazy, But It's Definitely



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First American To Receive Hand Transplant Reveals

IDEAS

# 13 People Who Got Fired For Tweeting

DYLAN LOVE

MAY 17, 2011, 6:28 AM

Facebook Twitter Reddit LinkedIn Email

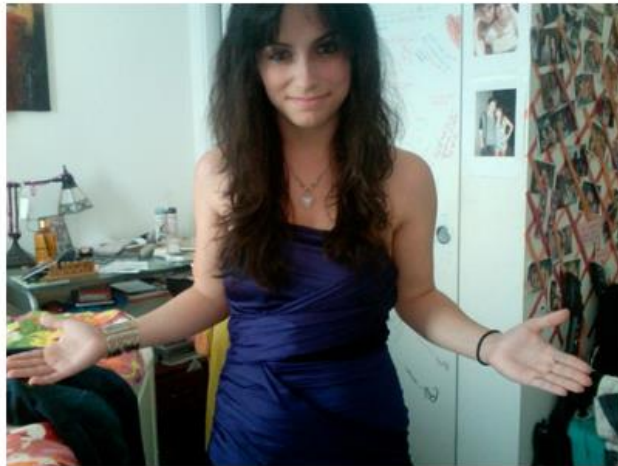


Photo: Glee Fans Mexico

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# Social Media Inside the Workplace

- As technology evolves, employers will have less control over when and how their employees access social media during work hours. Case in point – Smart phones!
- Does your employment contract include a duty for employees to devote the whole and time of their attention during work hours to the business?
- Have you identified how/when employer property is to be used.

[Griffiths v Rose \[2011\] FCA 30](#)

- Does your workplace need to restrict access to outside technology? Consider phones with cameras in nursing homes.





# Social Media Inside the Workplace

## [Faulkner v BHP Coal Pty Ltd \[2014\] FWC 9330](#)

*“The Applicant breached the Respondent’s procedure by having (and using) his mobile phone in his truck. The procedure represents a serious operating procedure relevant to maintaining the health and safety of the Respondent’s employees. As a starting point, the termination for breach of the procedure was for a reason which could properly be described as sound, defensible or well founded basis to discipline the Applicant.”*

# Social Media Use Outside Workhours

1. Reputational Damage

2. Client Relationships

[Little v Credit Corp Group Limited \[2013\] FWC 9642](#)

3. Use of Confidential Information

4. Interactions with other employees

[O'Keefe v Williams Muir's Pty Limited T/A troy Williams The Good Guys \[2011\] FWA 5311](#)

# Managing Inappropriate Social Media Conduct

- Contract
  - Set out your expectations of conduct during working hours
- Policies
  - Which employees are able to identify their employment, and on which platforms? Who has authority to use employer branding?
  - How is employer property to be used?
  - Are electronic devices permitted in the workplace?
  - Bullying and harassment policy
- Work Health and Safety Act 2011, section 28
  - “While at work, a worker must – ...
  - (b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons...

# Managing Inappropriate Social Media Conduct

1. Is this conduct inside the workplace/workhours?
2. If not, identify the interest that the employer has in governing the conduct (i.e. did the conduct pose a reputational risk to the employer).
3. How has the conduct breached the employee's contract, any policies the employer has, or the Work Health and Safety Act?

# Discrimination and Social Media

Consider also the employer's use of social media. Are you using social media to screen potential employee's? If so, using that information for a discriminatory purpose will create a liability.

## Equal Opportunity Act

Section 91 (1) Subject to this section, a person is, for the purposes of this Act, vicariously liable for a discriminatory or unlawful act of an agent or employee of the person committed while acting in the course of their agency or employment.



# Discrimination and Social Media

It is a defence, however, if an employer can establish that it:

- a) Had an appropriate policy for the prevention of the act;
- b) Took reasonable steps to implement and enforce the policy including:
  - i. Reasonable steps to make the employees and agents of the employer aware of the terms of the policy; and
  - ii. Prompt investigation of any alleged act and **taking appropriate action.**

# Work Health and Safety Implications

Section 19 of the *Work Health and Safety Act 2011* imposes an absolute obligation on a PCBU to ensure the health and safety of its workers, while the workers are at work in the business or undertaking.

Use of social media poses a risk to work health and safety by:

- Creating distractions in the workplace; and
- Providing another means for work related bullying and harassment to occur.

# Risk Management for your Business

1. The importance of a Social Media Policy.
2. The content of a Social Media Policy.
3. The connectivity to other policies (Harassment Policy).
4. Consequences for a breach of these policies.
5. Education and Training of employees at the workplace.
6. Other issues: authorisation to speak on behalf of your business, misleading statements and defamation.



# Questions

1. We shouldn't limit guidelines to social media as surfing the Internet could equally be taking up employee time.
2. What do safety professionals need to plan for in the future of risk management?

# Conclusion and Questions



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