

Social Media Discussion Paper

Employers need to protect themselves, to the extent allowable, with appropriate policies about disclosure of company information and use of or reference to, the company name in social media forums.

The development of social media gives rise to management and control issues for employers seeking to protect their confidential information whilst not interfering with the social liberties of its employees.

WHAT IS SOCIAL MEDIA?

Social media describes software tools that allow groups to generate content and engage in on-line conversations and exchange of content. Examples include blogs, wikis, tagging, online video, online photo sharing and social networking sites such as Facebook, Instagram and LinkedIn.

The development of the web and web-based technologies provide a vehicle to exchange and share information to a wide audience in real time. This can become problematic for employers.

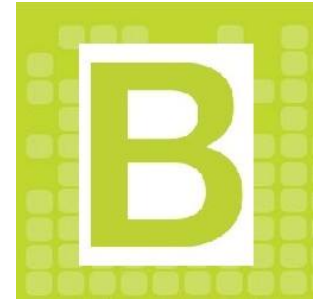
EMERGING ISSUES

Social media forums offer a valuable marketing and information source for employers but also have the potential to expose employers to risk such as loss of and/or disclosure of confidential information, discrimination claims, reputation risk, vicarious liability, privacy breaches and defamation.

Issues arise such as to what extent employers can control the use of social media forums by its employees without interfering or limiting employee behavior in a social context. Can an employer exercise or enforce any control over the social media relationships between employees outside of a workplace context? The use of social media in the workplace gives rise to other matters such as productivity and workplace efficiency.

There is no clear legislation as it relates solely to social media in Australia. The law is a combination of existing legislation and common law authority such as privacy, copyright and trademark laws which may be interpreted to offer some protection.

A social media strategy is fundamental for employers to protect, minimise and manage social media risk in the workplace. A good starting point is to acknowledge that social media and its use does pose risk to business.



TAKING CONTROL

In the absence of a social media strategy in the workplace it is difficult for employers to manage and control the use of social media by their staff to the extent that it directly involves the business.

Developing a social media strategy may involve revising and amending contracts of employment. It may involve developing a social media policy in the workplace or monitoring social media use.

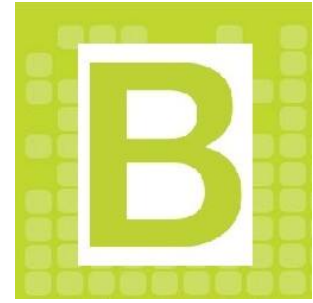
Adopting and implementing a social media strategy will create boundaries and expectations with respect to acceptable social media use in the workplace.

If correctly implemented, it will create an enforceable tool that can be used to monitor and control employee social media workplace behavior.

SOCIAL MEDIA POLICY

An employer's social media policy should be tailored to the employer's business and focused on what the policy is intended to achieve. Matters for consideration and inclusion in such a policy ought to canvas:

- The nature of conduct that the employer seeks to protect itself against
- Who should such a policy apply to for example, the entire business or levels within the business
- The nature of control over social media use for example, a total ban, limited use, total accessibility
- Authority limits or restrictions for use for example, is permission required, content pre-approval, who is responsible for such approvals
- What can or cannot be discussed on social media forums
- What logos, icons, ideas can or cannot be published on social media forums
- What disclaimers or other information must be included when participating in a social media forum
- The nature of behaviour that is acceptable or unacceptable
- When it is and isn't acceptable to use or participate in a social media forum
- Reporting any breach
- Consequences of breach



MONITORING AND MANAGEMENT

Part of the development of a social media strategy and implementation of a social media policy ought to involve appropriate staff training and an introduction of the intent and effect of such a policy. Communication will be paramount to ensuring employees act reasonably and consistently.

It will be important that employees understand the nature and purpose of the policy and acknowledge the consequences that flow in the event of breach.

To be able to monitor and manage such a policy an employer must also ensure that it has appropriate policies in place in terms of employee privacy and workplace electronic surveillance.

The proper implementation of a social media strategy and other mechanisms in place to support such a strategy (such as other appropriate policies and procedures) will go a long way in supporting the effective enforcement of a social media policy in the workplace.

