



## Social media and work – employees be warned

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A lot of workplaces permit, or even encourage, use of social media in work time. But as a recent case involving a WBBL cricketer demonstrates, social media use at work or about work can have negative consequences for workers.

The [suspension of Hobart Hurricanes wicketkeeper, Emily Smith for three months](#) after a single post to Instagram showing a team line-up prior to a game, is a timely reminder for employees to consider any ramifications from social media use in the workplace. While Smith's post was intended to be light-hearted, her employer, Cricket Australia, ultimately found that she had breached Article 2.3.2 of its anti-corruption code and handed out a heavy penalty.

Article 2.3.2 of the code prohibits:

*“Disclosing inside information to any person (with or without reward) where the participant knew or might reasonably have known that such disclosure might lead to the information being used in relation to betting in relation to any match or event”.*

While the experiences of top-level cricketers might seem a long way from your average workplace, there are lessons for all workers about social media use in the workplace. Like Cricket Australia, many employers have policies about social media. Workers should be aware of and understand those policies if they intend to use social media, including outside work time.

## Social media use in the workplace

Some workplaces allow workers to use social media in the workplace but many have restrictions on the timing, frequency or type of use for a range of reasons.

In Smith's case, a light-hearted shot from the team dressing room had a profound effect on Ms Smith's Career!

Many employers have a prohibition of "excessive" social media use (such as using social media excessively, or at all) or a ban on using social media during safety-critical times or tasks.

In our view, the law has fallen behind contemporary social norms in the way it treats social media posts. Be that as it may, at the moment you can get into real trouble if you are not careful with what you post on social media.

Understanding when and how your employer permits social media to be used in the workplace is important if workers want to avoid breaching policies, even unintentionally, that could lead to disciplinary action including the potential for dismissal.

## Protecting confidential information

Workers handling confidential information will likely be subject to policies and procedures designed to protect that confidential information which belongs to the company or clients or customers. In Smith's case, the disclosure of a team line-up prior to its announcement appears to have been in breach Cricket Australia Code.

When posting on social media at work, workers should be wary of the risks of inadvertently disclosing information which might be confidential.

This kind of information might include:

- worker, client or customer names or contact details;
- information which may amount to trade secrets or intellectual property of the employer; or
- information which may be critical to workplace safety or security.

The best way for workers to stay on the right side of their obligations is to have a good understanding of their employer's policies around social media use and confidentiality.

## Social media use outside of work

Your social media behaviour outside of work can also impact your job. There are numerous cases of employees being sacked for comments they have made about their bosses, colleagues or the company they work for. Banter that at the pub on a Friday after work would just be usual venting, when posted on social media can result in losing your job.

In certain circumstances, posts or messages made outside of work time can create problems for workers. This might include:

- posts detailing confidential work information;
- posts about your workplace that could be disparaging or damaging to the employer's reputation; and
- posts about work colleagues, bosses or managers that are unfavourable or could even constitute bullying, harassment or discrimination.

In certain circumstances, even posts made outside of work time which have nothing to do with your employment might breach a social media policy or code of conduct. These can include posts or messages which might offend other people, be abusive, threatening or discriminatory.

## What can you do to stay out of trouble?

There are a number of things you can do to make sure your posts don't get you into trouble.

- Read your employer's social media policy (if they have one);
- Place a statement on your social media page that the page expresses your private views, not those of your employer;
- Make sure you have tight privacy settings on your social media page so that it can only be viewed by friends and family;
- Think before you post! Save a tweet/post in draft, sleep on it and see if you think it is a good idea in the morning;
- Don't post while affected by drugs or alcohol. Really, this is almost always bad and never as funny as it seems at the time.

## Accused of a breach of your employer's social media policy? How to respond

Breaches of work social media policies can have serious consequences including, in some cases, termination of employment.

If you are accused of a breach of this kind, you should be wary of the potential consequences when responding. For advice and assistance in responding to a workplace allegation of inappropriate conduct, contact one of our employment lawyers.

## Terminated, demoted or sanctioned for a breach of policy?

In many cases, workers unfairly terminated from their employment will have rights under unfair dismissal laws, as well as other protections included in the *Fair Work Act* and discrimination legislation.

Workers may have additional rights under their contract of employment, Award or Enterprise Agreement. In cases involving termination of employment, strict limitation periods as short as 21 days can apply.

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There may also be protections where a worker who is unfairly sanctioned in other ways (such as formal warnings, loss of overtime or demotion) can seek review of this decision.

# In summary: know your rights!

Social media use at work and outside of work can get you into serious trouble.

Given the popularity of social media and the consequences it can have, understanding your employer's policies or codes of conduct and knowing your rights at work are arguably more important than ever.

## Get help from an employment lawyer

For advice on how to deal with these important issues or any other employment-related issues, [contact Hall Payne Lawyers for advice or representation](#).

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