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## *SOCIAL MEDIA AND THE WORKPLACE*

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Despite the personal benefits of using social networking tools such as Facebook and Twitter, they present problems for the workplace. As social networking increases in popularity, for many it provides an opportunity to vent their frustrations with matters such as work. Such venting however may jeopardise an employer's business interests and may give rise to costly bullying and harassment complaints made by employees.

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What the cases have shown is that there needs to be a sufficient connection between the conduct and the employment in order to justify dismissal.

One particular difficulty faced by employers is whether an employee may be dismissed for posting inappropriate comments on social media sites which happen to be made outside of the workplace and in an employee's personal time. This distinction between work and private conduct is becoming less clear and has been the subject of numerous unfair dismissal claims made by employees.

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### **About CCI Lawyers**

CCI Lawyers is a boutique workplace relations practice.

CCI Lawyers operates as an independently managed legal practice, providing legal services that are charged at competitive rates to employers across Australia.

CCI Lawyers is associated with the Victorian Employers' Chamber of Commerce and Industry ([VECCI](#)). Your business does not need to be a VECCI member to engage our services.

The following factors are indicative of a connection existing between the conduct in question and the employment:

- the employment relationship has been damaged by the conduct;
- the interests of the employer have been jeopardised in some way; and
- the employee has breached employee duties of good faith, fidelity, trust and confidence or other contractual obligations set out in an employment contract.

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In *Rose v Telstra*, it was found that the out of hours physical altercation between employees while away on assignment did not warrant dismissal. The conduct had lacked the requisite connection to employment on a number of grounds including that the physical altercation had taken place outside of work hours and in the confines of a hotel room, the employees were not in work uniforms at the time, and there was no evidence that showed that the conduct had tarnished Telstra's reputation or business interests.

In *Sally Ann Fitzgerald v Dianna Smith t/a Escape Hair Design*, FWA determined that an employee hairdresser who had posted the remark "Xmas 'bonus' alongside a job warning, followed by no holiday pay!!! Whoooooo! The Hairdressing Industry rocks man!!! AWSOME!!!" on her Facebook page had been unfairly dismissed.

FWA held that the comment itself did not identify the employer and the fact that she had been terminated a month after the posting had been made, demonstrated that the employment relationship had not been damaged by the posting. Therefore the posting lacked the requisite connection to her employment.

In contrast, the connection between the out of hours conduct and employment was considered sufficient to warrant dismissal in the recent case of *O'Keefe v Williams Muir Pty Ltd t/a Troy Williams The Good Guys*. An employee had been dismissed after he posted, outside of work hours, an aggressive and offensive comment about his employer on his Facebook page as follows:

*"f—king work still haven't managed to f-ing pay me correctly. C—ts are going down tomorrow"*

When questioned by his employer, the employee explained that the comment was targeted at the operations manager. The employer terminated his employment on the basis that the comments were derogatory and threatening towards the operations manager and amounted to serious misconduct.

Given the increased use of social media and the potential it has to jeopardise the business interests of employers when used inappropriately by employees, employers need to be proactive in eliminating or at least minimising opportunities for these issues to arise in the first place. There are a number of ways this may be done, including:

- Developing a policy that specifically addresses social media use both at work and away from the workplace which outlines the expectations of the employer and the consequences of failing to comply with the policy;

- Training staff and managers about appropriate use of social media;
- Incorporating into employment contracts an obligation on employees not to bring the employer into disrepute through the use of social media;
- Monitoring social media use in the workplace via IT systems and software;
- Promptly investigate issues when they are noted; and
- Only after a thorough investigation has been completed should an employer move to considering what disciplinary action might be required.

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