

# Legal Solutions newsletter



In this special issue we take a look at social media in the workplace.

## News

### NEWS

#### Facebook screening – invasion of privacy?

The evolution of applying for a job has little changed since the 19th century when job applicants required letters of reference from persons of standing.

Fast forward to the present and social media is upending centuries of tradition blurring the legal, moral and ethical lines for employers and job seekers.

In the news recently was a job applicant from the Sunshine Coast who applied for a position of a nanny and housekeeper in Melbourne.

After providing the employer with her resume and references, the applicant was asked for her a link to her Facebook page. Not surprisingly, the applicant's response to the request reflected public opinion.



While there is no law preventing employers from asking a jobseeker to see their social media page, it is unlawful to discriminate against people for 'protected attributes'.

The difficulty for job seekers is trying to prove discrimination occurred because of what a potential employer saw on social media.

**Employers need to be mindful of asking job candidates to see their social media pages. Potential discrimination issues aside, public opinion is in the majority against the practice and employers need to consider the implications of candidates withdrawing their application. Please contact Workforce Legal Solutions on (03) 9505 6221 if you need assistance with filling job vacancies.**

Source: ABC News on-line 10 Oct 2017; Meegan Evans (photo).

## Cases

#### *Michael Renton v Bendigo Health Care Group [2016] FWC 9089*

30 December 2016

In keeping with the 'Facebook' theme, the social media platform was centre stage in this recent unfair dismissal case before the Fair Work Commission.

Michael Renton uploaded a lewd video tagging two work colleagues on Facebook with a message 'Frank Christie getting slammed by Jo Keown at work yesterday!' (By doing so, the friends of both colleagues were able to view the post many who were fellow workers). The same day, Mr Renton left blobs of sorbolene cream on Mr Christie's desk intending to be a

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practical joke of a sexual nature.

After Mr Christie complained to Human Resources, Bendigo Health investigated the matter and found that Mr Renton's conduct was deemed to be serious misconduct. He was paid four weeks' pay in lieu of notice and subsequently lodged an application with the Fair Work Commission for relief from unfair dismissal.

Commissioner Bisset concluded that Mr Renton's conduct was 'boorish...crass and immature', and 'displayed an appalling lack of judgement' which 'affected the health and safety of his work colleagues'. Not only did Mr Renton later contact both colleagues 'in clear breach of a direct instruction', he later referred to the Business Unit Manager as 'the red headed cunt' which 'demonstrates a contempt for management'. Commissioner Bisset found the misconduct serious and warranted a swift and strong response from Bendigo Health. While appreciating the conclusion it reached in dismissing Mr Renton, the Commissioner found the dismissal was harsh 'because of its [the post] one-off nature'. He considered that reinstatement was inappropriate and damages were instead awarded to Mr Renton.

**The case highlights the importance of seeking legal advice when incidents of serious misconduct occur to ensure dismissal without warning is appropriate.**

**Mr Nirmal Singh v Aerocare Flight Support Pty Ltd [2016] FWC 6186**

**13 September 2016**

This complex case before the Fair Work Commission involved a series of Facebook posts by Mr Nirmal Singh who was employed as a casual by Aerocare Flight Support, a firm contracted to provide baggage handling services for Virgin Australia at Perth airport.

Mr Singh got into a spot of wee bother when a work colleague reported to his superior a message posted on Facebook by a religious extremist group called HuT (Hizb-ut Tahrir) Australia 'Pictures from today's demonstration held in Lakemba against the American/Russian led aggression against the revolution of Syria'. Mr Singh shared the supposedly private post with a comment 'We all support ISIS'.

The Commission accepted Mr Singh's evidence concluding that if Aerocare had properly investigated the matter, it would have been satisfied with Mr Singh's explanation that comment was made as sarcasm. The Commission found that while it breached Aerocare's social media policy, it was not grounds to justify dismissal. The Commission found that two other Facebook posts made by Mr Singh did not breach Aerocare's policy.

**This particular case highlights the need to undertake a thorough investigation.**

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**CHANGES TO THE OCCUPATIONAL HEALTH AND SAFETY ACT**

The Andrew's Labour Government recently passed new legislation amending the Occupational Health and Safety Act. The *WorkSafe Legislation Amendment Act 2017* provides WorkSafe with greater compliance and enforcement tools to prosecute offenders. New powers will allow WorkSafe to prosecute where offenders breach an enforceable undertaking with new penalties that can be applied by courts.

One of the important changes relates to duty holders who fail to notify WorkSafe of an incident or preserve a site after a serious incident will now face fines up to \$38,000 for individuals and \$190,000 for body corporates.

The Act also provides additional support for travel and accommodation with increased compensation entitlements of up to \$5,000 to family members of those injured.

We are able to assist organisations on all aspects of Occupational Health and Safety—staff and management training; formulation of policies and procedures; reporting and investigation of incidents; and legal representation.

Contact Workforce Legal Solutions on (03) 9505 6221.

Source: Media Release, Robin Scott MP 21 Sep 2017.