



ALLENS ACCELERATE

WHAT PRICE TO PAY FOR SOCIAL MEDIA IN THE WORKPLACE?

There's an assumption that everyone is on social media these days, even when they're at work – and they probably are. While startups might embrace social media, as employers they will need to understand and manage the risks that come with the use of social media in the workplace.

The trend of cases coming before the Fair Work Commission and courts indicates that employers – and the law – are increasingly grappling with the impact of social media in their workplace. Startups have the opportunity to get their social media policy right and have it in place from day one

WHAT ARE THE RISKS?

The biggest risks with social media for employers are in the areas of recruitment, workplace employee misconduct (in particular, bullying and harassment), protection of their IP and confidential information, and employee claims in response to disciplinary action.

You need to implement a social media policy that sets out clearly the potential consequences for employees whose conduct online breaches the policy and ensure that your employees are aware of and understand the policy. New employees should be given training in your social media policy as part of their induction to your company.

CAN I USE SOCIAL MEDIA TO ASSESS PROSPECTIVE EMPLOYEES?

There is nothing at law that prevents employers from accessing publicly available information posted by or about a candidate on social media sites such as Facebook, Twitter or LinkedIn and using that information in their assessment of the candidate. But you should be aware that there may be legal risks associated with this practice.

For example, you must comply with the Australian Privacy Principles regarding the collection, use and storage of an unsuccessful applicant's personal information.

And, if in your recruitment decisions you take into account information posted by or about your candidates on social media sites, you should also consider your potential exposure to adverse action (discrimination) claims.

CAN I DISCIPLINE MY EMPLOYEES FOR THEIR SOCIAL MEDIA CONDUCT?

An employee's conduct on social media (whether while at work or outside of working hours) can give rise to legal consequences for the employee and their employer if there is a sufficient connection between the conduct alleged and the employment.

If you have in place well-considered anti-bullying and harassment and social media policies, employees whose conduct on social media humiliates, degrades or harasses another worker or a customer are likely to be in breach of those policies. You can take disciplinary action against those employees, including by summarily terminating their employment.

If your employees vent their feelings on social media about your company or their employment conditions, and you wish to discipline them, consider whether any damage has been done to your brand by the posts and then ensure your response is proportionate.

IN SUMMARY

Social networking and social media have become intricately woven into the fabric of employees' daily life, at work and at play. So, while a sufficient connection between an employee's misconduct online and the employment still needs to be established before it becomes a workplace issue, as the line between work and play becomes increasingly blurred, you can't afford to ignore the impact of such social media misconduct on your workplace.

MEET THE TEAM

If you would like to learn more about social media, and other employment issues facing startups, get in touch with our team.

EMPLOYMENT



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ALLENS ACCELERATE

Allens Accelerate is a practice committed to working with startups and emerging companies to help them get on their way. Contact our team for more information.



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INTRODUCING THE A-SUITE

We know that legal issues are the last thing you want to focus on at the early stages of your startup venture. That's why we've developed a set of high-quality legal solutions specific to startups – called the A-Suite – to help you get your company up and running without a significant outlay of time or money.

The A-Suite is being made available on a free and open access basis to startups.

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