

## Employment & Safety Alert

### Serious misconduct on Facebook

August 2011

The case of *O'Keefe v William Muir's Pty Ltd trading as Troy Williams The Good Guys* highlights an increasing trend, recognised in Fair Work Australia decisions, that 'the separation between work and home is now less pronounced than it once used to be.'

Mr O'Keefe was dismissed when his employer, The Good Guys, became aware of threatening and derogatory comments he had posted on his Facebook page about his employer and a female colleague.

When Mr Williams, a Director of The Good Guys, confronted him with the allegations, Mr O'Keefe acknowledged that he had made the comments. Mr Williams stated that he considered the comments amounted to a resignation, and ultimately dismissed Mr O'Keefe for serious misconduct.

In his unfair dismissal application, Mr O'Keefe said that he made the comments because of frustration about pay and commission issues. He also said that his Facebook page was set at maximum privacy settings, but admitted that some colleagues could view his comments. Mr O'Keefe also contended that The Good Guys was not mentioned on his Facebook page.

During his employment, Mr O'Keefe was advised of and acknowledged his employer's requirement to communicate with other staff in a courteous and polite manner, and to avoid offensive language or threats. Fair Work Australia held that even in the absence of such a requirement, 'common sense would dictate that one could not write and therefore publish insulting and threatening comments about another employee in the manner in which this occurred.'

Fair Work Australia noted that the fact that the comments were posted on a home computer outside of work hours did not make any difference to the seriousness of the conduct. Fair Work Australia also held that the use of insulting and objectionable language may constitute serious misconduct, and this combined with the threatening of another employee was sufficiently serious to constitute a valid reason for the dismissal.

Mr O'Keefe's unfair dismissal application was dismissed.

#### Important issues

Regardless of when or where conduct takes place, if there is an intersection between the conduct and the workplace, it can be the subject of workplace policies and can justify disciplinary action.

Employers should:

- review relevant policies, and
- remind staff that behaviour outside the workplace may still impact on work, and in some circumstances could result in the termination of employment.

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