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## Employers must wake up on social media in work hours

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At a conference in Queensland a week ago when I spent half an hour chatting to the general manager of a financial services business she raised two concerns.



First was the use of the company's IT infrastructure by employees for social media and she explained that in her business they had put various blocks on social media to prevent employees from accessing it.

The second issue, arising from the first issue, was that they now note that nearly all staff use iPhones and continue the social media experience via that medium while at work.

She asked what she could do, saying attempts to stop the use of private mobile phones at work had been frustrated as a result of employees saying their children, partners and other family may need to contact them in the event of emergency.

The short answers to both questions are:

1. Your business must have a social media policy and procedure that explains that social media is not to be utilised at any time during working hours nor is any social media to be accessed outside work to deal with work-related matters and issues.
2. Except in extraordinary circumstances there is no basis for employees saying they need to rely on their mobile phone for emergency access. All work environments have manned phones where urgent messages can be passed on to employees.

In the recent case of *Richard O'Connor v Outdoor Creations Pty Ltd* [2011] employee Mr O'Connor, was summarily dismissed for the excessive use of social media.

His employer had undertaken a preliminary investigation which showed that he had used a Gmail chat account more than 3000 times. The employer considered that to be theft.

Importantly, the employer did not:

- Have a social media policy
- Have an IT infrastructure policy.
- Investigate the use as to when, why and how often.
- Put the allegations to the employee and asked the employee to comment, and
- Put any proper evidence before Fair Work Australia to show that the use of the social media in any way impacted on the employee's work. The contrary appeared to be true.

The clear lessons from this case are:

1. Admit that social media is the scourge of the workplace and identify how it could affect your workplace – in effect an assessment of risk. For example, if you ban the use of social media during working hours what are the possible instruments of IT that could be used to access it. One would be your own IT infrastructure. Two would be mobile phones.
2. Once you have determined how people are likely to access social media introduce appropriate paper

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infrastructure (policies and procedures) which identify that social media is not to be accessed during working hours (without consent) and that the use of social media to convey any work related information is improper and will not be accepted by the business.

3. Train people in policies and procedures, induct them and ensure that they are competent.
4. If you believe someone has accessed social media obtain appropriate evidence to demonstrate that has occurred, when it occurred, how often it occurred, the length at which it occurred on each occasion and what, if any, impact it had on the business.
5. When undertaking the disciplinary process ensure that all allegations are fully put, that the person has an opportunity to respond, that the personal circumstances of the employee are considered (age, longevity in the job, past disciplinary and performance history and other personal circumstances reasonably identified by the court) and then calibrate the discipline in relation to the seriousness of the breach and the personal circumstances.

If you follow all of the above you will be able to manage social media in your workplace.

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