

October 2012

Termination for Facebook comments: sackable offence or just like sounding off at the pub?

The case between Linfox and its employee Glen Stutsel - see [previous article](#) has gone another step. Linfox appealed against FWA's order reinstating Mr Stutsel.

Mr Stutsel had posted offensive comments about two Linfox Managers on his Facebook page. He knew little about the privacy settings on his Facebook page, which had been set up by his wife and daughter, and thought he was communicating "privately", akin to pub or café chat. In fact, other Linfox employees accessed his comments, and the managers concerned were able to access them. Linfox's case was not assisted by the absence of any social media policy which might have given Mr Stutsel guidance as to what was (not) acceptable. FWA held that some of the Facebook comments were so stupid that they did not amount to any credible threat against the managers. And the employee's 22 years of good service were also taken into account.

The appeal decision upheld the order to reinstate Mr Stutsel, finding that the initial decision was not "clearly wrong", even though Mr Stutsel's conduct was described as childish and objectionable and reflecting poorly on those who participated. The Full Bench commented that comments made directly to Managers and other employees and given wide circulation in the workplace will be treated more seriously than comments shared privately by a few workmates in a social setting.

While, in this particular case, reinstatement was upheld, the Full Bench sounded a warning for others in the future that Facebook conversations are significantly different to pub or café conversations. The conversation is recorded in writing, permanently unless the page owner takes it down. The number of people involved is far beyond the 4 or 5 people who might be in a group at the pub. Even if the comments were only accessible by Mr Stutsel's 170 Facebook friends, that was a wide audience, and included employees of the company. It was therefore substantially different from a conversation over a beer or a coffee: *"Employees should therefore exercise considerable care in using social*

networking sites in making comments or conducting conversations about their managers and fellow employees".

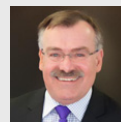
And as a further warning, the Full Bench said *"With increased use and understanding about Facebook in the community and the adoption by more employers of social networking policies, some of [the factors in this case] may be given less weight in future cases. The claim of ignorance on the part of an older worker who had enthusiastically embraced the new social networking media but without fully understanding the implications of its use, might be viewed differently in the future".*

The lessons from this case are:

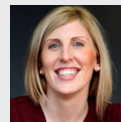
1. as an employer, have a social media policy in place and communicate it to your employees!
2. as an employee, be circumspect about what you say about managers or colleagues on Facebook and other social media outlets.

If you need assistance developing a social media policy for your business, contact Stephen Booth, Anna Ford or Enza Iannella.

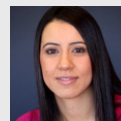
Employment Law Team



Stephen Booth, Principal
Phone: 9895 9222
Email: sbooth@colemangreig.com.au



Anna Ford, Associate
Phone: 9895 9233
Email: aford@colemangreig.com.au



Enza Iannella, Lawyer
Registered Migration Agent 1170072
Phone: 9895 9207
Email: eiannella@colemangreig.com.au

For Further Information

Coleman Greig Lawyers

The McNamara Centre
Level 9, 100 George Street,
Parramatta NSW 2150

Phone: 02 9635 6422
Fax: 02 9689 3983
Email: info@colemangreig.com.au
Web: www.colemangreig.com.au



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