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THE BUSINESS NEWSLETTER FROM AUSWILD & CO
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Inappropriate or negative comments made in work-related group chats can be a valid reason for dismissal, even if the comments are made outside of work hours. The Fair Work Commission (FWC) has recognised that such conduct can negatively impact workplace relationships and create a hostile environment.

In today's workplace, the integration of social media as a forum for staff communication and engagement is inevitable. While platforms such as WhatsApp, X, Facebook and Slack can enhance communication and team bonding, they also present challenges that require well-defined and regularly updated social media policies.

The 2024 case of *Roche v The Trustee for The Dolphin Hotel Unit Trust (FWC 606)* underscores the critical need for strong social media policies in the workplace as well as clear education about workplace expectations and the consequences for inappropriate conduct.

Breanna Roche had been a bar supervisor at The Dolphin Hotel in Sydney since April 2021. However, her employment was terminated after she criticised and participated in negative discussions about the management team on the "Dolphin Fam Bam" – a WhatsApp group chat for staff.

The Fair Work Commission found this conduct contributed to and created a negative environment among staff and was not appropriate for the workplace. Despite being warned several times by the employer, she continued sharing negative perspectives about the employer with her colleagues, providing a valid basis for her dismissal. The FWC considered the group chat to be work-related, not a private chat.

When can group chat conduct lead to dismissal?

- **Harm to workplace relationships:**

If the comments in the group chat negatively affect the working relationships between employees or between employees and management, it can be a valid reason for dismissal.

- **Breach of company policy:**

If the company has a policy regarding appropriate use of communication platforms, and the group chat activity violates that policy, it could be grounds for dismissal.

- **Impact on workplace culture:**

If the group chat creates a divisive or negative atmosphere, this can also be a valid reason for dismissal.

- **Out-of-hours conduct can matter:**

Even if the group chat is considered "private" or used outside of work hours, it can still be relevant to a dismissal if it impacts the workplace or breaches company policy.

- **Negative comments about management:**

Criticising management or sharing negative opinions about them in a group chat can be considered a serious breach, especially if it incites a negative or combative environment.

What makes a dismissal unfair?

- **Harsh, unjust, or unreasonable:**

The FWC looks at whether the dismissal was fair, considering the circumstances of the case.

- **Procedural fairness:**

The employer must have followed a fair process in investigating the conduct and making the decision to dismiss.

- **Disproportionate response:**

The punishment (dismissal) must be proportionate to the misconduct. For example, if the comments were unintentional or a minor breach, dismissal might be seen as too harsh.

The Roche case highlights several critical lessons for employers:

- "Private" employee group chats are seldom truly private when work matters are discussed. Employers may need to monitor and respond to inappropriate conduct occurring in these forums, just as with public social media activity.
- Those in supervisory roles should be put on notice and held to higher attitude and behavioural standards for forward-facing, customer service focused industries.
- Always consider an employee's full context and history when evaluating disciplinary issues. Prior warnings and patterns of behaviour are relevant factors.
- An employee's actions will be viewed in the full context of the employee and employer relationship. Roche's prior warnings about her continued negative attitude were factored in.
- Despite valid reasons for termination, employers must afford procedural fairness by notifying employees of concerns and allowing opportunities to respond.
- Employers can potentially justify termination over employees venting about leadership/management online, as this conduct would likely be in breach of the Employer's Code of Conduct and/or acceptable use of technology policy (if applicable).

The decision also serves as a cautionary tale for employees – what you say online can impact your career, even if you think it's a "private" conversation. Employees should avoid negatively discussing their workplace, managers or leadership as it can potentially be viewed as misconduct justifying termination. Employers may wish to provide employees with a timely reminder of this.

In an era where online venting is common, this case reminds employees to exercise restraint and professionalism. As the old saying goes, "loose lips sink ships" – badmouthing the boss, even in seemingly private chats, can have the potential to capsize one's professional journey.