



**Effective Workplace Solutions**

# **CLIENT ALERT**

## **SOCIAL MEDIA POLICIES AND THE FEDERAL MINIMUM WAGE INCREASE MAY 2016**

**To All of My Valued Clients,**

In this Client Alert we outline the need for employers to have a Social Media Policy in place. The constant and evolving technology landscape and the rise of social media as a marketing tool, dictates that businesses need to make sure that they have a social media policy that is solid and informative to all staff.

We also look at the up-coming Federal Minimum Wage increase due to be announced in June, what is the likely outcome and what it means for your payroll.

If you need further information in relation to these issues please do not hesitate to contact us at EWS.

**Greg Arnold**

**Director and Principal Consultant**

**The need for Social  
Media Policies**

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**Federal Minimum  
Wage Increase –  
What to Expect**

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# **SOCIAL MEDIA POLICY – A NECESSITY NOT A LUXURY**

There is no doubt that the last 5-10 years has seen massive changes in technology and hand-in-hand with that the increased take-up of social media by individuals and by businesses as an effective marketing tool.

I would also suggest that almost everyone that has a Facebook or Twitter account has their own stories of “Posts” and “Tweets” that they would prefer were not in the public domain. In most cases they were put there not of their own making but were the result of others “friends” making comments on their page or account. Many of course have “posted” or “tweeted”; thought about what they have said, and upon reflection have thought they probably shouldn’t have said it – but it’s there for all to see.

This lack of consideration of consequences; naivety; a desire to express individual’s views, and often the need for revenge can have disastrous consequences on businesses and staff. This can often be the case with staff members who for whatever reason decide that they want to make public their views of other staff members and indeed their employers. For some it’s a quick and easy way to “vent” or exact revenge upon a person or an organisation. These comments can damage the reputation of a business, or it can result in bullying and harassment claims.

## **The Damaging Facebook Campaign**

Most notably is the recent case of a Club in Brisbane where staff were not happy about being transferred to a labour hire company as the basis of their employment with the Club. Some of the disgruntled staff, with the assistance of other organisations started up a Facebook campaign page under the guise of a campaign against reduced penalty rates. Regardless of the truth surrounding all of the claims and counterclaims, that Club became the centre of this public campaign.

There were many disparaging posts and comments made by former staff, current staff and people who, in my view had no idea what the real issues were, but were happy to jump on the bandwagon. There is no doubt that the Club suffered considerable damage, if not to its reputation then certainly in the costs to mount a publicity defence against the Facebook campaign. One need only ponder if this sort of campaign would have been likely and as easily orchestrated 10 or 15 years ago when Facebook did not exist as it does now.

## **Linfox case**

There has of course, been many cases in the Fair Work Commission (FWC) and other Tribunals and Courts that have had to deal with the fall-out from social media outcomes. These cases started in about 2011 with the infamous “Linfox” case where the employee pleaded ignorance and naivety in respect Facebook posts about the Company and other managers and colleagues. In this case it was found that the employee had been unfairly dismissed for a number of reasons, including upholding of the plea of ignorance as to how his Facebook page worked, as well as the fact that there was not a Social Media Policy in place at Linfox at the time to provide the employee with guidance as to what was acceptable or otherwise.

## **Centrelink Case**

There are numerous cases where people have taken unfair dismissal claims resulting from termination because of social media comments, some have been successful and others not, and commentators have clearly indicated the lack of consistency from the FWC in their deliberations about social media matters.

This was demonstrated in the most recent case involving Centrelink when they dismissed a staff member who had publicly posted that Centrelink customers were “spastics” and “whinging junkies” and taking aim at the Government. In this case the dismissal was held to be unfair by Vice-President Hatcher of the FWC because of the employee’s extensive length of service of 20 years; that the conduct was not factually related to his work; and that the conduct caused no harm to the Department.

## **General Principles**

In spite of a perception of inconsistency arising from the FWC approach to these issues, there are some consistent principles that are critical for a dismissal of this kind to be upheld by the FWC. They are:

1. That it is important for the employer to have a clear policy on employees’ use of social media, covering what is and is not acceptable use (including examples) and setting out the consequences for misuse;
2. That the social media content must clearly identify the employer;
3. That the content must have the capacity to damage the employer’s reputation and business;
4. As knowledge and use of social media continue to expand rapidly, the ability of employees to argue they were unaware of how to control the use of it will diminish.

## **Need for Social Media Policy**

It is absolutely critical to have a Social Media Policy in place before an employer can attempt to defend a dismissal based on inappropriate use of social media. The Policy needs to be a quality document that has application to your workplace. Here are some tips:

- (a) It must be robust and is clear to the staff as to what is expected and what will not be tolerated in respect to social media, including the reference to the “Like” button;
- (b) It must be a policy that is clearly understood;
- (c) It must be properly communicated to all staff as part of an induction and refresher process;
- (d) Ideally it should be referenced to your Bullying and Harassment and Anti-discrimination policies so that there is a clear link “cyber-bulling”

The bottom-line for businesses is, if you don’t have a social media policy in place, then you risk not being able to defend any disciplinary action that you take against staff who may have potentially damaged your business.

If you would like some help in drafting and implementing an effective Social Media Policy in your organisation, please don’t hesitate to call us at *Effective Workplace Solutions*

# FEDERAL MINIMUM WAGE INCREASE – WHAT TO EXPECT

It's nearly that time of the year again when the Fair Work Commission will hand down the increase the Minimum Wage (FMW). This will mean that all Award rates of pay will increase by the increase that is pronounced. As is always the case, the announcement is expected in early to mid-June with an operative date of the first pay period on or after 1 July 2016.

## **How much will the increase be?**

As is always the case, the peak Employer bodies and the Unions are "poles-apart" on their submissions for the increase. Employers are arguing for a modest 1.2% increase, while the ACTU submits that the increase should be a flat \$30.00 per week

I have long given up on trying to accurately predict the increase, however the trend since I can recall has been that the increase is about .5% -1% higher than the current CPI figure. In the last 5 years or so, the increase has been between 2.5% and just under 3%. CPI is currently running at about 1.3 – 1.5%. The recent interest rate cut by the RBA may also have an impact on the outcome.

So I'm going to hazard a guess and suggest that the increase will be between 2.3% and 2.5% - the lowest for a long time. But don't be surprised if the increase is a flat dollar amount because we have had 5 years of percentage increases which results in an expansion in the range of wages, and the FWC may want to curb that expansion this year.

## **Do I have to pay the increase?**

The question I'm often asked at this time is "Do I have to pass on the increase to my staff?" The short answer is yes; if you pay your staff under the Award.

However, if you pay your staff wages or salaries over the Award, then it may well be that you can absorb any increase into that over-Award payment. But much will depend upon the employment contract or letter of appointment that you have with the staff member and how the over-Award payment is expressed in those documents.

If you would like further information in relation to this issue, and whether the FMW increase can be absorbed into above Award payments, please do not hesitate to contact us.

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