

What are my employment rights?

Am I being treated fairly at work?

Where do I go for help?

SOCIAL MEDIA & WORK

Tips & Traps

DISCLAIMER

This infosheet contains information of a general nature only and is not a substitute for professional legal advice. You should obtain legal advice from a lawyer about your particular situation before acting on any of the following information. This infosheet is designed for Victorian and national system employees in Tasmania and Queensland only. If you are not a Victorian employee or a Queensland or Tasmanian national system employee, you should obtain specialist legal advice about your case as soon as possible.

What is social media?

Social networking websites, or social media, are online services which allow people to build personal profiles and make connections with others. Social media allows people to share their interests, what they are doing, how they are feeling and other personal details.

Some of the most common social networking websites include Facebook, Twitter, YouTube, Instagram, Google+, LinkedIn and Myspace.

Are social networking websites private?

Most people assume that the information they post on social networking websites such as Facebook is private because they are posting them in a personal capacity.

Here are some reasons why social networking websites may not be as private as you think:

Social networking websites implement new privacy policies and settings regularly, usually on an opt-out rather than opt-in basis. When updates are made, users are not necessarily informed. As a result, many people are unknowingly sharing more personal information online than they intended. Your Facebook profile could turn up in a simple Google search.

Even if you understand that Facebook is not completely private, keeping it under your control requires a great deal of IT knowledge. You have to navigate and click through many privacy settings before you can reach maximum security.

Even if your Facebook profile is set at the maximum privacy setting, so that your photos and updates can only be seen by your friends, you cannot control the behaviour of everyone who sees your page.

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Employment Rights Information for Workers – Job Watch Inc is an independent, not for profit, employment rights legal centre. It provides a free, confidential telephone information and referral service and other assistance to workers.

Hours: Mon-Fri 9am-5pm (Wednesday until 8:30pm).

Job Watch Inc | Metro (03) 9662 1933 | Regional Victoria, Queensland and Tasmania 1800 331 617 | www.jobwatch.org.au

Information that you share on social networking websites can become permanent written records, able to be captured, shared and widely distributed.

Social media and your employment

Although social media posts seem informal, information posted on social media may potentially be accessed by your current employer, prospective employers, recruitment agencies, co-workers and others.

Social media during the recruitment stage

Many employers and recruitment agencies use social media to learn more about job applicants and screen candidates. What you share online can both improve and damage your chances of getting a job.

Here are some tips to help ensure that a prospective employer will not be put off by your activity on social media.

SET YOUR PRIVACY SETTINGS TO THE HIGHEST LEVEL TO MINIMISE OPPORTUNITIES FOR POTENTIAL EMPLOYERS TO ACCESS YOUR PROFILES

Make sure you are familiar with and able to navigate the privacy settings on the social networking sites which you use. Set your privacy settings to the highest possible level to minimise opportunities for potential employers to access your profiles.

BE AWARE OF THE IMPRESSION CREATED BY YOUR POSTS

Employers and recruitment agencies are not impressed by material such as photos of you intoxicated, comments about illegal drugs, posts which are sexual or discriminatory in nature, swearing, spelling and grammatical mistakes and also of course negative comments about your workplace.

BE AWARE OF WHAT INFORMATION OTHERS CAN ACCESS ABOUT YOU ONLINE

To check what information others can access about you online, one suggestion is to google your name and examine the results. Also, check how much information your profiles on social networking websites reveal to an unknown visitor.

CLEAN UP YOUR ONLINE PROFILES

If you believe that there is content on social media which may hurt your chances of getting a job, you should remove it and disassociate yourself from that content.

CREATE A POSITIVE PRESENCE ON SOCIAL MEDIA

If a potential employer does decide to check your social media presence, you want what you share online to help rather than damage your chances of getting a job. You want to show that you have the relevant experience, skills and qualifications to do the job. One suggestion is to create a profile on LinkedIn which positively shows off your professional identity.

PLAY TO YOUR AUDIENCE

Research what your potential employers look for in their employees and control the information you share on social media accordingly. While many employers look for employees who maintain a strong professional image online, others may want someone who shows that they can be fun and outgoing.

Social media in the employment stage

There are many ways in which the use of social media can affect your current employment. Here are some tips for using social networking websites during your employment.

BEWARE OF FORMING ONLINE FRIENDSHIPS ON SOCIAL NETWORKING WEBSITES WITH YOUR EMPLOYER AND/OR COLLEAGUES

You might become Facebook friends with your employer/colleagues for genuine social reasons, however be aware that the risk of this is that they can keep a closer eye on your private life online.

READ AND UNDERSTAND THE POLICIES GOVERNING SOCIAL MEDIA USE IF THERE IS ONE AT YOUR WORKPLACE

You may want to check whether your employer has a social media policy. Many employers nowadays have policies which outline their expectations of employee's social media use. These policies can cover the use of social networking websites both during work and in private time (if it relates to work). Social media policies may also address the impact of social media on bullying and harassment in the workplace and also confidentiality. Some policies might also place obligations on employees to report colleagues who are breaching the policies. Failure to comply with social media policies may result in disciplinary action, including potentially dismissal, so it is a good idea to read and understand any social media policies which exist at your workplace.

DO NOT POST DEROGATORY COMMENTS ABOUT YOUR JOB, MANAGERS OR COLLEAGUES, WHETHER AT WORK OR IN YOUR OWN PERSONAL TIME

You may be upset at your employer, or about something that happened at work, but writing an angry Facebook post is not the best thing to do. Try to find another way to settle down and deal with your situation.

There have been cases where courts and tribunals have found that posting derogatory comments about work or colleagues is a valid reason for dismissal. Derogatory postings may also expose you to legal liability for defamation. Social media posts are admissible as evidence in legal proceedings so it is important to be careful what you say.

DO NOT SPEND TOO MUCH TIME ON SOCIAL MEDIA.

Unless you are required to spend time on social media for work purposes it is not a good idea to spend a lot of time using social media at work. In fact, some employers prohibit its use at work altogether. Employers are allowed to monitor internet usage in the workplace to ensure employees are performing their duties and often do so. Spending time on social media rather than doing your work is generally unacceptable to employers and can lead to disciplinary action or dismissal.

DO NOT DISCLOSE CONFIDENTIAL INFORMATION OBTAINED FROM YOUR EMPLOYMENT ON SOCIAL MEDIA.

Disclosing confidential information obtained from your employment can be a valid ground for dismissal and may also expose you to legal liability for breach of contract or breach of fiduciary duty. In some circumstances, you may also have a responsibility not to disclose confidential information even *after your employment has finished*.

Bullying and harassment on social media

Any bullying, harassment (including sexual harassment) or discrimination which occurs on social networking websites can be the subject of a legal claim the same way as if it happened in person.

Workplace bullying has been characterised as '*persistent and repeated negative behaviour directed at an employee that creates a risk to health and safety*'.

Under the *Fair Work Act 2009* (Cth) workplace bullying occurs when '*an individual or group of individuals repeatedly behaves unreasonably towards a worker or group of workers and the behaviour creates a risk to health and safety*'.

If you feel you have been bullied or harassed on social media by your employer and/or colleagues your options may include making an application to the Fair Work Commission for a stop bullying order, making a complaint to your State's WorkSafe Authority about the bullying and lodging a worker's injury compensation claim. Please refer to JobWatch's 'Workplace Bullying' information sheet for further details.

Social media and dismissal

If you feel that you have been unfairly or unlawfully dismissed due to your activity on social media you may be eligible to make an Unfair Dismissal Claim or a General Protections Dispute Termination Claim to the Fair Work Commission. For further information about Unfair Dismissal and General Protections Applications please refer to JobWatch's 'Unfair Dismissal' and 'General Protections Termination Claim' information sheets.

It is important to note that you have only **21 days** from the date your dismissal takes effect to file your claim.

Discrimination on social media

State and Federal laws exist to prohibit discrimination based on certain protected attributes which include race, colour, sex, sexual preference, gender identity, intersex, age, religion, physical or mental disability, physical features, marital status, family or carer's responsibilities, pregnancy, political opinion, national extraction and social origin etc.

If you believe you have been discriminated against because of something your employer or a prospective employer discovered about you on social media or sexually harassed on social media you may be eligible to make a General Protections Dispute Claim or a Discrimination Claim under State or Federal anti-discrimination law.

Please refer to 'Where to get help' below for where to obtain further assistance.

Where to get help

For further information regarding social media, individuals may wish to contact the relevant organisations on the following page.

ORGANISATION	PHONE	WEBSITE
JobWatch <i>(Telephone interpreters available for non-English speakers.)</i>	Metro: 9662 1933 Queensland, Tasmania & Regional Victoria: 1800 331 617	www.jobwatch.org.au
Australian Human Rights Commission	Complaints Infoline: 1300 656 419 General Enquiries: 1300 369 711	www.humanrights.gov.au
Fair Work Commission Helpline	1300 799 675	www.fwc.gov.au
Victorian Equal Opportunity and Human Rights Commission	1300 292 153	www.humanrightscommission.vic.gov.au
Anti-discrimination Commission Queensland	1300 130 670	www.adcq.qld.gov.au
Equal Opportunity Tasmania	1300 305 062	www.equalopportunity.tas.gov.au
Legal Referral Service (Law Institute of Victoria)	(03) 9607 9311	www.liv.asn.au
Queensland Law Society (for referral to a lawyer)	1300 367 757	www.qls.com.au/Home
Law Society of Tasmania (for referral to a lawyer)	(03) 6234 4133	http://lst.org.au
WorkSafe Victoria Advisory Service	(03) 9641 1444 1800 136 089	www.worksafe.vic.gov.au
WorkSafe Queensland	1300 362 128	www.worksafe.qld.gov.au
WorkSafe Tasmania	1300 366 322	www.worksafe.tas.gov.au

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