

# Ai Group Legal News

Experience

Matters



Ai Group Legal provides professional legal services to complement the business and workplace services that have been provided by Ai Group to its members for many years.

## Outside business hours



### Are there any limits on employee conduct "out of hours?" What is an employer responsible for these days?

The separation between what is "work" and what is not for the purposes of employer liability is often hard to fathom. Events which seem quite unconnected with work, particularly "out of hours" social events which often take place well away from the workplace are regularly found to be work related, with the employer being held liable for significant damage caused by the irresponsible behaviour of drunken employees as well as becoming liable for any

injury suffered by an employee.

Many of the more extreme cases involve injury compensation when a finding by the Court that an event occurred "*in the course of the employment*" is crucial to the success of the claim.

The same "course of employment" test will apply in other circumstances and has precious little to do with when or where the incident has occurred.

A recent case of *Wheeler v South Australia Police* (2011) SAWCT 30 involved a group of employees being sent from Adelaide to Mount Isa for a five day work training program. The group had been to a networking function at a club and on leaving, went to a pizza bar. Mr Wheeler was physically assaulted by a member of the public and he suffered injury.

The South Australian Tribunal found that there was a sufficient connection to the workplace and that the injury had therefore occurred "*in the course of the employment*". The employee was entitled to compensation.

With the rapid approach of Christmas and the office party season soon to get into full swing, employers should be reminded that their responsibility for employees' conduct does not stop, either at the factory gates or when the siren sounds for the end of the day.

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### What steps can you take?

Ai Group Legal recommends that employers plan carefully for work functions, such as Christmas parties. Many Christmas parties take place outside business hours, or can evolve into "after-parties." Steps an employer can take to reduce the risks of inappropriate and unsafe behaviours by employees include:

- Communicate clearly with employees what will be considered a company-sponsored event and what will be considered a non-company event;
- Arrange (in advance), appropriate transport options for employees;
- Engage in the responsible service of alcohol; and
- Ensure that the company has in place relevant and clearly communicated policies dealing with appropriate behaviour in the workplace.

Should you require assistance in managing these risks or responding to claims arising from out of hours conduct, contact Ai Group Legal on 1300 554 581.



## Outside business hours and Social Media

The growth in social media has seen a blurring of the division between home and work activities for many of us. Social media enables us to communicate with others about all circumstances of our lives, often with the punch of a one line message. The apparent willingness of people to share their life experiences via social media means that there is increased visibility and access to people's frustrations, thoughts and experiences.

A recent Fair Work Australia decision of *O'Keefe v Williams Muir's Pty Ltd t/a Troy Williams The Good Guys [2011] FWA 5311*, has shown that an employee posting 'tweets' of frustration at his employer while at home, was still accountable to his employer for his actions. In that case, the employee, who had been employed for four years, posted vitriolic comments and threats against his Operations Manager for "stuffing up" the employee's pay. The employee's comments appeared on his Facebook page and were visible to other employees in the workplace. The employer dismissed the employee for threatening the employer's

Operation Manager and viewed his conduct as an intention that the employee no longer wished to be employed.

The employee filed an unfair dismissal claim arguing that he did not intend for his employer to read what he posted on his Facebook page. The Tribunal, however, upheld the employee's dismissal. The Tribunal found that the employee had engaged in misconduct by threatening the manager, even though such threats were posted online at home after working hours. The Tribunal said that *"the fact that the comments were made on the applicant's home computer, out of work hours, does not make any difference [43]."* The Tribunal found that the online threats were quickly known to other employees and the threatened manager, and that the employee could not rely on the separation between his home and the workplace to protect his actions. Despite the outcome in this case, employers should exercise caution when dealing with employee use of social media outside the workplace and should seek advice before taking disciplinary action.



## The Social Media Connection

### Steps you can take

Ai Group Legal recommends that employers be prepared for employee use of social media by having in place social media policies. Such policies may include setting guidelines or restrictions on social media usage in connection to the workplace. Your policy should state not only the ground rules for social media usage, but the consequences if those rules are not complied with. For example, employees who disparage the employer, the employer's customers or co-workers on social media, may face disciplinary action, up to and including termination of employment.

Ai Group Legal can assist in the development of social media policies for your business and in managing issues that arise from employee misbehaviour via social media.

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