

??Social Media and the Workplace – A Recent High Court Decision

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Can Employees Express their Political Views through Social Media?

The High Court has recently struck down a ruling that a Federal Government department unjustifiably trespassed on the implied constitutional rights of an employee when her employment was terminated over making political tweets.

In essence:

- the employee brought an unlawful termination claim after her employment had been terminated for making political tweets about her employer, the Department of Immigration and Border Protection
- the employee argued that her employer had imposed an unreasonable burden on the employee's implied freedom of political communication
- the employee had previously succeeded in bringing a claim before the Administrative Appeals Tribunal that dismissing her for anonymous tweets highly critical of government policy trespassed on her implied constitutional rights and failed the "**reasonable management action**" test
- the High Court though affirmed the decision by Comcare to deny the employee's claim for compensation for a psychological condition allegedly aggravated by her dismissal and ruled that it did **not** constitute an injury because her employer took "**reasonable management action**"

Implied Freedom not Personal Right to Free Speech

The High Court said in its judgment that it was:

"highly desirable if not essential to the proper functioning of the system of representative and responsible government" that governments of all complexions "have confidence in the ability of the APS to provide high quality, impartial, professional advice"

The High Court also said that:

"the APS [Australian Public Service] will faithfully and professionally implement accepted government policy, irrespective of APS employees' individual personal political beliefs and predilections"

Where to from here?

There is no doubt that the High Court's decision sends a clear and cautionary message to employees, particularly those in the public sector, about ensuring their own political views and



the voicing of them through social media do not conflict with their employment duties.

Although the decision was limited to a Federal government department, it has implications across all levels of government and to private sector employers.

More Information

Please call the leading employment lawyers in Parramatta, the **Matthews Folbigg Workplace Solutions** employment law team on **9635 7966** to speak with one of our employment lawyers if you require any assistance or advice.