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## Fair Work Commission – Social Media Posts

Date : June 8, 2017

### Fair Work Commission – Background

The Fair Work Commission found an employee dismissal to be unfair. Mr Somogyi was dismissed because of vulgar social media misconduct. However, a fair dismissal procedure must be followed by employers.

### Fair Work Commission – Facts

In essence:

- Somogyi was employed as a merchandiser at LED Technologies Pty Ltd
- on 24 August 2015, he posted on Facebook: "I don't have time for people's arrogance. And your not always right! Your position is useless, you don't do anything all day how much of the bosses c\*\*\* did you suck to get where you are?"
- the post was seen by several of Mr Somogyi's colleagues before he removed it after five minutes
- his employer dismissed Mr Somogyi in a sixty second telephone call. The employee was told: "it doesn't matter. You're fired"
- the employer failed to provide the employee an opportunity to explain his conduct
- furthermore, the employer mistakenly interpreted that the post was referring to employees of LED Technologies Pty Ltd
- the employee reposted a 'clarification' explaining his original post. He was referring to a hostile employment situation his mother was facing elsewhere

### Fair Work Commission - Decision

The Fair Work Commission found:

- the Facebook post was 'crude and immature'
- the post did not constitute a valid reason for dismissal
- offensive and vulgar language are increasingly part of the common vernacular
- there was no evidence the post was directed at the business or its employees
- no evidence that Mr Somogyi was provided a social media policy
- there was no sufficient connection to the workplace to justify legitimate action against Mr Somogyi
- Mr Somogyi was to be compensated with the difference in his earnings from another role for a period of six months

### Employment Law – Tips for Employers

Unfair dismissal claims must be confined to their own facts. Therefore, our **Matthews**



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**Folbigg Workplace Solutions** employment law team recommends employers:

- review this Fair Work Commission decision
- seek the assistance of an employment lawyer to understand the impacts of this Fair Work Commission decision
- prepare new social media policies as required
- update employment law policies in response to this Fair Work Commission decision
- draft new/changes to employment law policies with the assistance of an employment lawyer
- train and consult with staff about social media in the workplace and the impact it can have on employment
- fairly, consistently and lawfully respond to breaches of employment contracts and employment law policies
- penalties can apply for breaches of employment laws including Awards and enterprise agreements (which an employment lawyer can advise on)

## Employment Law – 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.

(See [S v LED Technologies P/L \[2017\] FWC 1966](#))