

Off-Duty Social Media Conduct – Ask the Expert



Off-duty conduct can still become a workplace issue when it affects employees, working relationships, or the overall environment.

The key consideration is whether there is a meaningful connection to the workplace.

QUESTION

If employees share inappropriate content with each other on their personal social media accounts, outside of work and on their own devices, does the employer have any responsibility once it becomes known in the workplace?

ANSWER

Potentially, yes. Employer responsibility can extend to off-duty social media activity if there is a clear connection to the workplace and the conduct negatively affects the work environment.

EXPLANATION

Courts and tribunals apply a “nexus” test when assessing off-duty conduct. The question is whether the activity harms workplace relationships, creates conflict, undermines psychological safety, breaches harassment or discrimination standards, or damages the employer’s reputation. If the content is sexual, discriminatory, targeted at a coworker, or causing disruption among staff, it may trigger obligations under occupational health and safety or human rights legislation.

Once an employer becomes aware of conduct that may contribute to a toxic or unsafe work environment, there is generally a duty to assess the situation and determine whether further steps are required. Ignoring known issues can increase legal risk.

Addressing the matter in a toolbox talk and documenting it is an appropriate first step. However, if concerns persist, a more formal review, confidential conversations, or investigation may be warranted. Policies should also clarify that off-duty conduct may have consequences where it impacts the workplace.