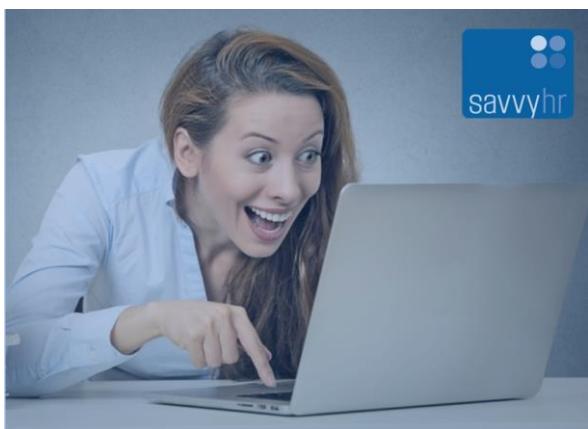


Employer Update

“Disparaging” and “highly offensive” email leads to sacking.

The Fair Work Commission (FWC) has upheld the dismissal of an Account Manager for making “disparaging” and “highly offensive” comments about her Employer’s clients in an email she accidentally sent to them.



Background:

The Account Manager had written an abusive email about the Employer’s clients which she had intended to send to a contractor (who was also her friend) however, the clients were accidentally copied into the email.

The “intemperate and inappropriate” email contained references to the client’s ethnicity and origin and the client later advised the Employer that they would no longer deal with any company represented by the Accounts Manager.

The Employer chose to stand down the Accounts Manager for serious misconduct; being an alleged breach of the code of conduct and IT policy.

She was requested to attend a disciplinary meeting 4 days later to discuss the email and was advised that she could bring a support person to that meeting.

The Account Manager responded to the allegations in writing and, although she apologised for sending the email, she explained that she had accidentally sent the email to the client because she was having “issues with concentration and focus”, had been suffering from post-traumatic stress disorder, and had inadequate support from management with regard to implementing organisational change.

The Account Manager, who had worked for the Employer for 15 years and had no prior misconduct warnings, was summarily dismissed for breaching the Employer’s code of conduct and IT policies.

Findings:

The FWC found that the Account Manager’s actions constituted a valid reason for dismissal and the Employer was justified in summarily dismissing the Account Manager irrespective of whether the client was copied in or not.

The email contained comments that were entirely inappropriate and in breach of the Employer’s code of conduct and their IT policy. The IT policy specifically prohibited statements in any email that would embarrass either the sender or the Employer if disclosed to the public. The FWC stated that the fact that the email was sent to clients “greatly multiplied the gravity of the misconduct”.

The FWC found the Employer had responded appropriately to the incident by giving the Employee a chance to respond by email when she said she was too unwell to attend the disciplinary meeting and then taking her explanation into account. The Employer also chose to pay the Account Manager in lieu of notice because she did not intend to send the email to the client.

The FWC noted the Account Manager's long period of service and that she had apologised for her actions, however the FWC determined that these factors "did not outweigh the gravity of the misconduct so as to render the dismissal harsh".

• **Tips for Employers:**

This finding demonstrates the need to implement fair processes when addressing misconduct.

As with any policy on workplace conduct, we recommend that Employers minimise risk by training staff about their policies and the ramifications for breaching those policies, ensuring compliance and responding to breaches in a fair and lawful manner.

If you are an Employer who is concerned about email or internet use and the impact it may have on your business, contact Savvy Human Resources Associates.

[Georgia Sologinkin v Cosmetic Suppliers Pty Ltd T/A Coty \[2017\] FWC 1838 \(31 March 2017\)](#)

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