

# NATIONAL LOCAL GOVERNMENT HUMAN RESOURCES CONFERENCE

## **HOT** ISSUES IN IR

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# OUT OF WORK CONDUCT



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- **WHY IS IT AN ISSUE?:**
- In some areas traditional view of work starting and ending is outdated
- Employers have responsibilities which extend beyond safe ways of performing work
- Tendency for employees to use social media to publish images and comments which would not otherwise be made public



# OUT OF WORK CONDUCT

## Poll

### Facts

- Employee (male) worked in a factory since 2002
- 700 employees on site, approx 235 female
- 2007 - charged with criminal offences including harassment by post (sending nude female pictures), stalking, make and possess child pornography (nothing occurred in the workplace or involved colleagues)
- April 2009 - found guilty of 8 offences, sentenced to imprisonment
- Convictions reported in local press
- June 2009 – access to factory suspended (on basis of media reports).

### Question

Were the criminal charges a valid reason for termination?

# OUT OF WORK CONDUCT

- **Conduct with a *relevant connection***
- Context is conduct which allows employer to take disciplinary action, including termination.
- Criteria to assess fairness of termination includes was there a “*valid reason*” for the termination.
- For a reason to be valid it must have a “*relevant connection*” to employment

# OUT OF WORK CONDUCT

- **Conduct with a “*relevant connection*”**
- Test to determine relevant connection is an objective one. There are three considerations:
  1. Is the conduct such that it is likely to cause serious damage to relationship between employer and employee?
  2. Is the conduct damaging to the employer’s interests?
  3. Is the conduct incompatible with the employee’s duty as an employee?

# OUT OF WORK CONDUCT

- **Conduct with a relevant connection**
  1. Is the conduct such as it is likely to cause serious damage to the relationship between employee and employer
    - Trust and confidence



# OUT OF WORK CONDUCT

- **Conduct with a relevant connection**
- 2. Is the conduct damaging to the employer's interests
  - Disrepute/reputational damage



# OUT OF WORK CONDUCT

- **Conduct with a relevant connection**
- 3. Is the conduct incompatible with the employer's duty as an employee.
  - Conflict with particular obligations, for example police officers

# OUT OF WORK CONDUCT



Cases:

- *Rose v Telstra*
- *Ergon Energy v Training & Employment Recognition Council*
- *Fitzgerald v Escape Hair Design*
- *O'Keefe v Williams Muir's (The Good Guys)*

# OUT OF WORK CONDUCT

## Some key factors influencing 'connection to work'

- Uniforms or something clearly linking out of work conduct to employer
- Contractual terms & Policies – expected standards / use of social media
- Acting quickly and decisively
- Composition and vulnerability of the Employer's workforce
- Media coverage
- Imprisonment - frustration



# OUT OF WORK CONDUCT

POLL

*Wilson v Nestle Australia*

