

Icing on Cake for Facebook Privacy Laws & Impact on Your Workplace

Article By:

Labor and Employment Practice Group Squire Patton Boggs

While **Facebook** continues to produce evidentiary gold for employers seeking to prove employee wrongdoing, a recent **New Zealand** case demonstrates that privacy settings can't be ignored.

In a recent ruling, the New Zealand Human Rights Review Tribunal ordered an employer pay an ex-employee a hefty \$168,000 after it wrongfully accessed her Facebook page and maliciously distributed its contents to her new employer.

Ms Hammond and her work colleague had both resigned from their employment at NZ Credit Union Baywide (**NZCU**) in early 2012. To celebrate / commiserate their resignation, Ms Hammond hosted a private dinner party and prepared a cake with the delightful words "F*** YOU NZCU" and "C***" iced on top. Unsurprisingly in this digital age, it wasn't long before an image of the cake surfaced on Facebook.

The NZCU management team caught wind that a picture of an inflammatory cake had been posted on Ms Hammond's Facebook page, but despite the best efforts of NZCU, Ms Hammond's privacy settings meant that only Facebook "friends" could view the image.

Determined to gain access to the photo, NZCU pressured a junior staff member, who was a Facebook friend of Ms Hammond, to log into her Facebook account and take a screenshot of the picture for NZCU. Upon receiving the private image, NZCU:

- emailed the photo to local employment agencies;
- sent an internal email outlining the circumstances of Ms Hammond's resignation; and
- disclosed the photo to her current employer while placing severe pressure on them to terminate Ms Hammond's employment.

In considering these actions, the Tribunal found that NZCU breached its privacy obligations to Ms Hammond which requires an agency that holds personal information to refrain from disclosing that information.

The Tribunal awarded Ms Hammond \$168,000 in compensation, comprising \$98,000 for humiliation, loss of dignity and injury to feelings, \$38,350 for pecuniary loss of income, \$16,177.78 for loss of benefit and \$15,543.10 for legal expenses.

This case reminds us that 'shooting from the hip' can have grave consequences for employers who, in the heat of the battle, place their legal obligations to one side and respond emotionally rather than tactfully to the issue at hand.

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