Say Cheese! Workplace Photos and Privacy

By Miriam Power

Recording and Publishing Personal Images in the Workplace

As we leave the workplace "party season" behind us, employers should consider whether events have been recorded for posterity by having someone appointed or engaged to take photographs or videos. While images of employees taken by employers (or by other employees at workplace functions) may be legitimately used for promotional or "team" purposes, the critical factors are consent and respect.

Pictures taken thoughtlessly and without their knowledge may depict employees in an unflattering or embarrassing light. This is particularly so in social settings where it is expected that behaviours will be less formal. Images of employees taken without their consent and circulated in the workplace (or re-published on social media) may expose employers to claims of bullying, harassment or breach of privacy laws. It may also be culturally inappropriate and constitute workplace discrimination.

Privacy Laws

Privacy law in Australia protects images of identifiable individuals. The collection and handling of personal information (which includes photographs and videos) is regulated for many private sector employers by the Australian Privacy Principles (APPs). While there is an exemption from the APPs for "employee records", this exemption only applies to employee personal information if the information is used for something that is directly related to the employment relationship between the employer and the employee. In any event, "best practice" employers will treat employee images in accordance with the APPs.

Tips for Employers

The following tips can be applied to photography and video recording at workplace functions to ensure privacy is respected and employers are not exposed to workplace claims:

- avoid appointing or engaging a photographer to take random shots of employees in social settings where the employees have a reasonable expectation that their images will not be recorded
- if a photographer has been engaged, ensure that they seek consent of employees before recording their images
- seek consent of employees before circulating their images in the workplace (even if they provided consent when the image was taken)
- restrict (through policy and express direction) the ability of persons to take photographs or videos on personal devices at workplace functions without the consent of persons involved (remembering that persons in the "background" of shots may be unwittingly involved)
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- restrict (through policy and express direction) the publishing of any images at workplace functions on social media or the internet by employees without authorisation and consent of the persons involved.

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