

Vicarious liability related to discrimination and harassment

“What does it mean?”

Federal/state anti-discrimination law provides that an **employer may be legally responsible for discrimination and harassment** which occurs in the workplace or in connection with a person's employment **unless it can be shown 'reasonable steps' have been taken** to reduce this liability. This legal responsibility is called 'vicarious liability'.

Whose conduct is covered?

An employer may be vicariously liable for the conduct of:

- individual employees or groups of employees ...
- an applicant for a job
- directors, supervisors or managers ...
- workplace participant (where two people work on the same premises, but have different employers)
- agents eg. insurance salespersons operating on a company's behalf
- contract worker or person who is being paid commission
- a partner of a company harassing another partner
- members of organisations which grant occupational qualifications
- A person employed by a trade union harassing a member
- A person operating an employment agency who harasses someone who uses the agency.

In connection with a person's employment

The vicarious liability provisions of the legislation only apply where the alleged discrimination and harassment occurs in connection with the person's employment. This means the employer may be held vicariously liable for the actions of employees if they have not taken reasonable steps to prevent the discrimination and harassment from occurring both within the usual work environment and at employer sponsored seminars, conferences, **work functions**, Christmas parties, business or **field trips**.

Liability of individual persons

The vicarious liability provisions of the legislation do not preclude **individual persons** from being **held liable for their own discriminatory or harassing behaviour** in the workplace or in connection with their employment. It may be that both the **employer** who has been found to have not taken reasonable steps to prevent the discrimination and harassment from occurring and the **individual** who is the alleged discriminator or harasser will be held jointly liable for the behaviour” (HREOC 2001).

Managers and Supervisors need to understand that it is NOT an excuse for an employer to say “I didn't know it was happening”. Even if the event occurs without the knowledge of an employer, if **reasonable steps** have not been taken to prevent the event happening, the employer may still be liable.

“Reducing employer liability

'Reasonable steps' could include:

- Preparation and regular circulation of a written policy prohibiting workplace discrimination and harassment”

UQ has policies and brochures that are readily available on the UQ website. (Printed copies can be supplied on request – talk to The Equity Office). It is a manager or supervisor’s responsibility to ensure that the staff and students in their area are aware of these policies. Why not discuss UQ policies such as *Code of Conduct; Discrimination, Harassment and Bullying; Management of Sexual Harassment Grievances and Staff Grievance Resolution* at your next staff meeting?

- “Ensuring that all staff are properly trained about workplace discrimination and harassment and its prevention”

The University of Queensland has a range of training programs for staff. In 2004 these include *EO Online, Legislative and Policy Context for Managing Staff* and *The Role of Senior Staff in Managing Grievances*. See the Staff Development Website : <http://www.tedi.uq.edu.au/sdh/>

Managers and supervisors should ensure that they undertake staff development in this area and ensure their staff are aware of *and understand* related University policies. All staff should complete *EO Online*: <http://www.uq.edu.au/equity/index.html?page=12190>

“For large corporations and businesses employing over 20 people, as a bare minimum ... **Training of supervisors and staff would be essential**” (Walters, 1998).

- “Establishing effective complaint procedures.
- Treating all complaints seriously and investigating them promptly.
- Ensuring that appropriate action is taken to address and resolve complaints” (HREOC).

Again, the University has clear complaint procedures related to *Discrimination, Harassment and Bullying* and the *Management of Sexual Harassment Grievances*. See also Staff and student grievance procedures. Managers and supervisors need to be aware of their responsibilities within these policies.

- “Monitoring the workplace environment and culture” (HREOC).

The Equity Office collects data from UQ Discrimination and Harassment Contact Officers about the types of queries they receive. This informs staff development and other UQ wide strategic initiatives. Managers also provide The Equity Office with statistical information related to grievances of this nature.

It is also the responsibility of Managers and Supervisors to monitor their local area for appropriate workplace behaviour. If you see inappropriate behaviour it is important that you make clear that it is unacceptable.

The Human Rights and Equal opportunity Commission (HREOC) provides the following example:

A manager who is aware that an employee is being sexually harassed and does nothing about it may be held liable as an accessory to the harassment. There is no defence available for this type of liability...

In effect, a person will be an accessory to harassment if they were aware that sexual harassment was occurring, or were aware that there was a real possibility of it occurring, did nothing to address it and thereby allowed the harassment to take place.

Hostile working environment

The University of Queensland's policies specifically prohibit the development of a workplace environment that is hostile to a person in a sexual context or in terms of discrimination, harassment or bullying. It is incumbent upon all University employees, but particularly upon those in management or supervisory roles to ensure that people work and study in an environment that is positive, safe and respectful.

"Employers also need to be aware of their responsibilities to ensure that the working environment or workplace culture is not sexually or racially permeated or hostile. Examples of a potentially hostile working environment are where pornographic materials are displayed, crude conversations or innuendo and offensive jokes are part of the culture. A person has the right to complain about the effects of a sexually or racially hostile working environment even if the conduct in question was not specifically targeted at them..." (HREOC, 2001).

Adapted from:

Human Rights and Equal Opportunity Commission (2001) Information for Employers – Vicarious Liability http://www.hreoc.gov.au/info_for_employers/liability/index.html (Accessed 10 February 2004)

Human Rights and Equal opportunity Commission (2004) Sexual harassment in the Workplace: A code of practice for employers. http://www.hreoc.gov.au/sex_discrimination/code_practice/index.html See Section 3: Liability http://www.hreoc.gov.au/sex_discrimination/code_practice/data/3_liability.html (Accessed 1 April 2004)

Walters, Karen (Former Commissioner) (1998) *Vicarious Liability – What does it mean in Practice?* Anti Discrimination Commission Queensland <http://www.adcq.qld.gov.au/newsletter/issue03/story6.html> (Accessed 10 February 2004)

Further information and assistance is available from:

- The Equity Office: equity@uq.edu.au ph 3365 53052
- Employee Relations: ph 3365 3030
- Personnel Services: <http://www.uq.edu.au/personnel-services>