

maintain a working environment free from any or all sexual harassment, discrimination, workplace bullying, a shortfall in terms of equal opportunity and any other behaviour that cause distress to any staff members.

Evidence of any of the aforementioned within an organisation potentially contributes to stress and an unsettled workforce, especially when issues are perceived as being ignored or badly handled by management. Successful claims against an organisation or its employees for breaches in these areas may lead to financial and other consequential damage for the business.

Firstly, it is important for employers to be aware of their responsibilities and obligations and of the ramifications of breaching those obligations. During 2010, legislation was enacted that increased the powers of regulatory inspectors to review and report on employee's mental wellbeing.

- Fair Work Australia, by means of the *Fair Work Act*, widened the powers of Fair Work Inspectors in relation to protecting workplace rights in terms of discrimination. As noted on the FWA website:  
"An employer must not take any adverse action against an employee (or prospective employee) because of his or her race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin."
- *The Accident Compensation Act* imposes penalties against employers who discriminate against employees on the grounds of a work injury record.
- *The Victorian Equal Opportunities Act 2010* (effective April 2011) expects employers to operate a discrimination free workplace.

The above powers are in addition to those contained in existing legislation such as the *Sex Discrimination Act (Commonwealth)*.

Breaches of obligations may occur between a line manager and their subordinate; however, there may be instances of breaches on a horizontal level – employee to employee. This is an appropriate point to highlight the principle of vicarious liability – the buck stops with the employer.

The recent case of *Employment Services Australia Pty Ltd v Poniatowska* (a claim of sexual harassment in the workplace) provides some straightforward warnings. In simple terms, the case narrative indicates that complaints of sexual harassment made by Ms Poniatowska were not appropriately



### **THE CLAIMANT WAS AWARDED SUMS TOTALLING \$466,000 TO BE PAID BY THE EMPLOYER, REGARDLESS THAT THE ALLEGED HARASSMENT WAS CARRIED OUT BY TWO MALE EMPLOYEES.**

handled by organisational personnel and it is alleged that the employer had no formal policies and procedures in place for dealing with such matters. The claimant was awarded sums totalling \$466,000 to be paid by the employer, regardless that the alleged harassment was carried out by two male employees. The tangible and intangible damages from loss of reputation, low morale, staff turnover and so on, are not quantifiable outside of the organisation.

Some tips for a healthy workplace include:

- Have in place a full set of policies and procedures regarding workplace ethics and expectations of employee behaviours, including a workable grievance procedure.
- Keep policies and procedures up to date.
- Implement regular staff training across the organisation and ensure staff

fully understand and implement their obligations.

- Apply thorough reference checks to all new employees, irrespective of status.
- Encourage staff to report any matter of concern, however minor, and without punitive repercussion.
- Treat all complaints seriously and deal with them as a priority.
- Ensure that all employees are treated fairly and equitably.

In summary, and as part of a dynamic corporate OHS policy, employers and their employees should be aware of their individual responsibilities and obligations on their own behalf as well as on behalf of their colleagues. Work together to maintain a fully healthy organisation. ■

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