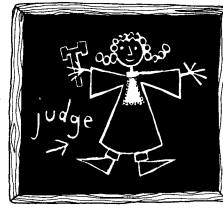


LEGAL STUDIES

Sexual harassment — is the employer liable?



Anti-discrimination legislation makes employers directly responsible for incidents of sexual harassment by employees in the course of their employment. After reading *Interpreting Vicarious Liability with a Broad Brush in Sexual Harassment Cases* by Patricia Eastal and Skye Saunders, examine the responsibilities of employers for sexual harassment in the workplace.

1. Defining sexual harassment

- What does the term sexual harassment mean?
- What type of actions do you think could be classed as sexual harassment?

2. Employers and the Sexual Discrimination Act

Divide students into groups of 3 or 4, and answer:

- What does s 106 of the *Sexual Discrimination Act 1984* (Cth) say about an employer's duty of care in relation to sexual harassment?
- Suggest reasons why the *Sexual Discrimination Act* places a responsibility on the employer to ensure sexual harassment does not occur in the workplace.
- What must a person prove when claiming that an employer is liable for sexual harassment under s 106?
- What does the term 'onus of proof' mean? In sexual harassment cases, when does it shift from the person making the complaint to the employer?
- What is vicarious liability? How does this apply to sexual harassment cases?

3. How do we define 'in connection with employment'?

Working in groups of 3 to 4 students, read 'Clocking off for the day.'

- Draw up a chart like the one below. Explain the meaning of 'in connection with employment' for each case listed.

Case	In connection with employment means:
<i>Johanson v Michael Blackledge Meats</i>	
<i>McAlister v SEQ Aboriginal Corporation</i>	
<i>Leslie v Graham</i>	
<i>Frith v Glen Straits Pty Ltd</i>	
<i>Trainor v South Pacific Resort Hotels Pty Ltd</i>	
<i>Smith v Christchurch Press Company Ltd</i>	
<i>Cross v Hughes</i>	
<i>Lee's case</i>	

- Based on the decisions in these cases, how would you define the term 'in connection with employment'?

4. What reasonable steps can an employer take?

Working in groups of 3 or 4 students, read 'Skirting around vicarious liability' and 'Post pen to paper'.

What factors will the courts consider when deciding if reasonable steps have been taken to deal with sexual harassment?

- Does the *Sexual Discrimination Act* define 'reasonable' steps? Explain.
- Draw up a chart like the one below. Outline the meaning of 'reasonable steps' in each case.

Case	Reasonable steps means:
<i>Gilroy v Angelov</i>	
<i>Johanson v Michael Blackledge Meats</i>	
<i>McAlister v SEQ Aboriginal Corporation</i>	
<i>Leslie v Graham</i>	
<i>Cooke v Plauen Holdings</i>	
<i>Font v Paspaley Pearls</i>	
<i>Aleksovski v AAA Pty Ltd</i>	
<i>Trainor v South Pacific Resort Hotels Pty Ltd</i>	
<i>Lee's Case</i>	

- Based on the decisions in these cases, how would you define 'reasonable steps'?

5. A Sexual Harassment Policy

Working in pairs, find out more about what should be included in a sexual harassment policy. The HREOC website provides information for employers. <www.hreoc.gov.au/info_for_employers/policies/sexual_harrassment.html>

Consider the following issues:

- What types of behaviours should be prohibited?
- What are the responsibilities of employers?
- What action can an employee take?

Design a poster or brochure to inform people about sexual harassment policies.

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