



VICARIOUS LIABILITY

Queensland anti-discrimination laws promote fairness by prohibiting discrimination, sexual harassment, victimisation and vilification.

Most complaints about unlawful behaviour come from the workplace.

Employers can be held liable for breaches of the Act by their workers.

What is vicarious liability?

It's the responsibility you have (as an employer) for the actions of your workers or agents towards others as they do their work.

If these actions are found to be unlawful under the Queensland *Anti-Discrimination Act 1991*, both the person complained about and you (their employer) may be held responsible. You need to show the steps you've taken to prevent the behaviour.

Examples

A worker sexually harasses another by repeatedly making remarks about her breasts in front of co-workers. He also has her head on the body of a naked woman as a screen saver.

You own a restaurant, and one of your waiters refuses to serve a woman who is breastfeeding her baby, and has told her to leave the restaurant.

A complaint can be lodged against both the worker and the employer.

Can vicarious liability be defended?

Yes, you can defend this liability, by showing you took 'reasonable steps' to

prevent your workers or agents from treating others unfairly or badly. These 'reasonable steps' aren't listed in the Act, because what's reasonable for a large business may not be reasonable for a small company.

'Reasonable steps' could include having policies about fair treatment in the workplace, providing training (for all staff, especially managers and supervisors), and having a process in place for dealing with complaints.

Example

An employer always makes sure that

- *new staff are given training on appropriate behaviour in the workplace*
- *supervisors, managers and staff are trained regularly in discrimination law*
- *workplace policy on appropriate behaviour is reviewed and updated annually*
- *there's a process to deal with any complaints quickly, privately and seriously*
- *posters and brochures available from the Anti-Discrimination Commission are displayed in the workplace*
- *staff are encouraged to contribute to a healthy workplace culture.*

(There are many more suggestions we could use. These are just a few.)

Each case will depend on its own merits, but as a general guide, you need to do everything you can reasonably do to prevent inappropriate behaviour in the workplace.

Where do I start?

You could check our website at www.adcq.qld.gov.au for samples of policies you could use or modify for your workplace. They include examples of equal opportunity policies, dealing with complaints, the role of managers and supervisors, and contact officers.

If you develop your own policy, staff at the Commission would be available to do a check and give you some comments.

The Commission also provides training throughout Queensland on discrimination law issues. Again, check the website for details.

The website also contains details of various cases for your information.

What else do I need to know?

While taking steps to prevent discrimination or harassment in the workplace might take some effort and time, there are also many benefits. These can include:

- reduced absenteeism
- increased productivity
- reduced staff turnover
- becoming an employer of choice
- less time spent in dealing with complaints
- improved morale and a healthy workplace culture.

Please contact your nearest Commission office for more information.

This brochure is one of a series on particular aspects of the Act. It is available only from the website. Others include exemptions, direct/indirect discrimination and victimisation.

The full range of brochures can be read and copied from this website at www.adcq.qld.gov.au