

A Healthy Corporate Mind

by Gillian Kinder

Mention the topic of *Occupational Health and Safety* and it is unlikely that there is an organisation in Australia that claims not to understand this subject, but how deep is that understanding and application?

Agreed, OH&S is about maintaining a healthy workplace, an environment that is physically safe for employees and visitors. I was recently in conversation with someone from a manufacturing organisation who told me of six site visits from a Worksafe inspector over the course of three months; that's heavy going and being handed that scenario who wouldn't make sure that the work environment was physically safe for staff and visitors? Nevertheless, there is the obverse of physical safety that also needs to be applied in the workplace which is the moral and psychological wellbeing of the workforce. It wasn't unusual, when growing up, to hear the Latin expression '*mens sana in corpore sano*' translating as a healthy mind in a healthy body. Put in the context of the work environment, an organisation that is healthy in its thinking and action plan regarding protection for the workforce from mental and psychological distress as part of the OH&S strategy and risk management plan, is an organisation that creates the best platform for fully efficient operations. Cynics may dismiss this as 'political correctness'; such cynicism may be overturned by taking note of ongoing legislative measures and recent legal decisions when considering the impact on an organisation that dismisses the abstract side of OH&S.

Legislation is creeping up behind organisations; statute writers are incorporating some of these intangible elements of OH&S into legislative amendments as well as into the obligations found in new pieces of legislation. The focus here is a continual need to maintain a working environment free from any or all of sexual harassment, discrimination (on whatever ground), workplace bullying, a shortfall in terms of equal opportunities, other behaviours that cause distress to any or all of the staff; evidence of any of the foregoing within an organisation potentially contributes to stress and so to 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.

First off, it is important for an employer to be aware of their responsibilities and obligations and then to be aware 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 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 ¹
"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

¹ <http://www.fwa.gov.au/index.cfm?pagename=disputegeneral>

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

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

Good communication is of the essence within any organisation. Breaches of obligations may occur between a line manager and their subordinate; however let us not forget that there may be instances of breach 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 handled by organisational personnel, indeed 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 employer was deemed to be vicariously liable. (The tangible and intangible damages from loss of reputation, low morale, staff turnover etc. are not quantifiable outside of the organisation.)

Some tips for a healthy workplace:

- 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 as regards 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 OH&S 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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