

VICARIOUS LIABILITY

Our previous article was on misconduct by a senior employee. We are closing the 2017/18 Financial Year with an article on vicarious liability that could arise from actions or omissions of management. For the purposes of this article, the word management is not only confined to mean members of management, but includes supervisory officials as well.

Vicarious liability is where someone is held liable for the actions or omissions of another (Abrahams & Cross 2017). An employer will be vicariously held liable for the negligent act of his or her employee/employees or agent/agents in the event of them acting in a negligent manner during the course of their employment (Schoemanlaw). Employers need to be aware that generally, they can be held liable for the actions of their employees.

Abrahams and Cross indicate the following as the three requirements for vicarious liability of an employer:

1. An employment relationship;
2. The commission of a delict; and
3. The delict must have been committed within the scope (sometimes course and scope) of employment.

Schoemanlaw puts it in simpler terms when they provide the following three common law requirements for vicarious liability to occur:

1. An employer-employee relationship must be established;
2. A wrongful act must have been committed by an employee; and
3. The employee must have committed the wrongful act whilst acting within the course and scope of his/her employment.

The underlying fact is that the wrongful act or omission was committed by the employee in his capacity as the employee of the employer, not as an independent individual. This is the case in relation to all employees irrespective of the ranks they hold within the organisation. Therefore, it is important that we, as employees, execute our duties, conduct ourselves and behave in a manner that will always protect the business of our employer.

Going back to the previous article which dealt with the conduct of senior employees, we made reference to Regulation 14(h) of the Public Service Regulations 2016 on the Code of Conduct for the Public Service. Regulation 14.(h) of the Code of Conduct in the Public Service Regulations 2016 stipulates that an employee shall be committed to the optimal development, motivation and utilisation of employees reporting to him or her and the promotion of sound labour and interpersonal relations.

This Regulation goes to the heart of the manner in which a manager/supervisor communicates with or treats employees/officials reporting to him/her. It is accepted that a person in position gives/issues lawful instructions to his/her team members which they have to obey. He/she also maintains supervision over them and ensures their training and development for the mutual benefit of the organisation and employees/officials. It is imperative to remember that generally, a happy employee is a productive employee.

Such happiness normally stems from the treatment which they receive from their supervisor/s and/or manager/s. For example, it is given that at some point in time a supervisor/manager will have to discipline her/her employee/official. It must be borne in mind that discipline is not to be done in public but is to be done privately. A person's mistake/s are not to be discussed in public but privately with the person concerned. If such arises within a meeting situation, and just when it comes to that point; the chair is to halt discussing on the point at issue and

rather inform the person to remain/stay behind when the meeting comes to an end so that his/her mistake/s can be privately discussed between the supervisor/manager and the person concerned.

However, a person can be praised in front of their colleagues for good or outstanding achievements as such appraisal can motivate others for recognised achievements as well. Hence, the golden rule 'discipline privately and praise publicly'.

Sometimes the treatment received could be traumatic to the extent where professional help is warranted for an employee's/official's recovery. In some instances, such trauma could develop to a chronic condition. If it could be proved that such was caused by a horrible treatment received by an employee/official from their supervisor/manager and the matter/issue is taken to court, if proved; the employer can be held vicariously liable for the actions of the supervisor/manager. Then, the employer who has borne the costs can thereafter take disciplinary actions against the said supervisor/manager.

Vicarious liability matters have been dealt with by various courts in the country with costly decisions/consequences against employers. In ***Fhedzisani and Unitrans Limited T/A Greyhound, case number: 18952/10***, a bus driver who was standing outside the bus assaulted two passengers who had come to board the bus. Disciplinary actions were taken against him by his employer and he was dismissed as a result. However, the employer was not absolved and was held vicariously liable for the actions of the bus driver and such was based on the fact that even though the driver was acting contrary to the employers prescripts, he was "exercising his duties when he apparently lost his temper and the incident ensued".

In ***Media 24 LTD & another v Grobler [2005] 7 BLLR 649 (SCA)***, an employee had been sexually harassed by a junior manager over a period of five months. She had repeatedly reported the incident to the employer to no avail as it was alleged that the employer failed to address the issue or deal with the allegations of sexual harassment seriously and expeditiously. Consequently, when the employee took the matter to court; she was awarded damages in the amount of R776 814-00. The significance of this case's outcome is that the employer must ensure that they attend to issues experienced and reported by their employees and attempt to address them. Otherwise the non-addressing thereof could have far reaching implications for the employer.

Human resources (i.e. people employed by an organisation) remain the most important resources within an organisation as they are the ones who put other resources in good use for the benefit of the said organisation. It is therefore important to ensure that such resources are treated as assets to the organisation within the framework of the applicable prescripts.

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