

September 2007

Failure to ensure all employees attend EEO Training leads to damages payout in Sexual Harassment Claim!

The recent case of *Hunt v Rail Corporation of NSW [2007] NSW ADT 152 (24 July 2007)* decided in the Administrative Decisions Tribunal ('the Tribunal') highlights the need for all employers to conduct EEO training for their employees and ensure that *all* employees attend.

A sexual harassment claim by the manager of the Train Crew Assignment Centre of the NSW Rail Corporation ('RailCorp') has resulted in a payment of \$20,000 compensation by RailCorp. The manager was the subject of humiliating graffiti in the men's toilets where she worked and had a pornographic magazine put under her door. The Tribunal found fundamental flaws in the way RailCorp dealt with the incidents.

The manager claimed four male workers had written lewd graffiti in the men's toilets, describing her as a "slut face", and depicting her in various sexual acts with workers and her husband, who also worked for RailCorp. She claimed she was sexually harassed by the content and recurrence of the graffiti and that, despite her repeated complaints to HR about their behaviour, RailCorp had not taken all reasonable steps to stop the workers' actions.

The Tribunal found that the purpose of the graffiti was to "humiliate and harass [the manager] by creating an environment in which male staff would see the graffiti that demeaned [her]."

RailCorp was found vicariously liable for sexual harassment, despite the fact that those responsible for the graffiti and the magazine were never found.

RailCorp's evidence was that it had investigated and sought to deal with each of the graffiti incidents the woman complained of by:

- . applying anti-graffiti paint to the toilet walls
- . installing closed circuit TV to monitor the stairs near the toilet area
- . implementing a system of regular checks of the toilet
- . regularly inspecting the toilet to check for graffiti
- . engaging forensic handwriting experts
- . discussing (among managers) strategies for dealing with the continuing problem, and
- . providing employee briefings on workplace behaviour covering:
 - . what constituted inappropriate behaviour

- . harassment
- . the corporation's HR policies dealing with the issues of harassment, and
- . the policy that harassment would not be tolerated and could result in dismissal.

Not all staff attended briefings

Although 17 briefings were conducted between September 2004 and March 2006, they did not involve all employees and were not compulsory. The tribunal said that in order for RailCorp to assert it had taken appropriate steps to avoid being vicariously liable for its employees' actions, it should have also made sure all employees were aware of the policies. This was a fundamental flaw in the steps taken by RailCorp, "... in that it meant that it was possible that some staff, perhaps those who were least aware of anti-discrimination, sexual harassment and bullying policies, were able to avoid attending the briefing sessions", said the Tribunal.

The Tribunal found that while RailCorp investigated the pornographic magazine incident, it "*concentrated on trying to identify the culprit at the expense of or to the exclusion of accepting that the actions indicated that more should be done to reinforce the code of conduct and other policies of RailCorp with its staff generally*".

The Tribunal held that the manager had proven she was sexually harassed by the "highly offensive" graffiti about her and awarded her damages of \$20,000.

HOW DOES THIS AFFECT YOU?

- . **This case is a warning to all employers of the need to ensure *all* employees are briefed in EEO Training on what constitutes sexual harassment (and discrimination) in the workplace.**
- . Employers should ensure that the EEO training is compulsory and that in fact **all** staff attend the EEO Training!
- . EEO training should be conducted on at least an annual basis.
- . For more information in relation to how we may assist you in providing training to your organisation, please see the attached ***CK WorkWise Training Brochure***.



Lisa Honeychurch
Partner

