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Vicarious Liability – What Does It Imply for Employers?

Vicarious liability is a legal principle that holds an employer legally responsible for the wrongful acts or omissions of an employee where those acts occur within the course and scope of employment. This principle ensures that victims have recourse against an employer who is generally better placed to compensate them, while also encouraging employers to implement appropriate measures to manage workplace risk.

Recent Labour Court judgments have highlighted the significant implications that vicarious liability may have for employers and managers. These decisions demonstrate that employers may face substantial financial losses, legal scrutiny and reputational damage arising from the conduct of their employees. It is therefore essential that employers understand the extent of their legal obligations and proactively manage their exposure to potential claims.

Unfortunately, there is no "one-size-fits-all" approach to managing the risk of vicarious liability. Every workplace presents unique operational risks, and the level of exposure will depend on the nature of the employer's business, the duties performed by employees and the circumstances of each case.

While employers cannot completely eliminate the risk associated with employees performing inherently risky functions, they can take reasonable steps to reduce their exposure. This includes establishing clear workplace rules, policies and operational procedures that set out expected standards of conduct and provide mechanisms for holding employees accountable when they fail to act in the employer's best interests or commit misconduct in the course of their duties.

To be effective, these policies and procedures should be documented in writing. In any dispute, the employer bears the burden of proving that employees were aware of the applicable workplace rules and policies and that they had reasonable access to them. Employers should therefore ensure that policies are regularly communicated, acknowledged by employees and readily accessible.

Finally, employers should periodically review their workplace policies, procedures and operational practices. Such reviews should extend beyond legal compliance and form part of a broader risk management strategy aimed at identifying vulnerabilities, strengthening governance and reducing the likelihood of liability arising from employee conduct.

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