

Vicarious Liability Examples

The examples below demonstrate that the implications and impact of vicarious liability can be wide ranging and have significant consequence for organisations and individuals, even though they may not have been directly involved in unlawful actions.

The purpose of the policy statement is to inform all those who are involved in Hinckley and Bosworth Borough Council business how to identify and manage the risks associated with vicarious liability. Ignorance of the law is no defence if you have any questions please contact a member of the HR team.

Example One

A individual goes into the local fast food restaurant and places his order. He is wearing a uniform that clearly identified his place of work. During the time he was waiting for his order to be prepared he became impatient and shouted at the member of staff serving him saying "What's taking so long you 'F***ing paki' - I haven't got all day." A member of the public complained about the foul language and racist behaviour. The employing organisation took disciplinary action against their employee.

However this would not prevent the owner of the restaurant claiming damages for racial discrimination against the organisation.

Example Two

The BBC has experienced the full implication of vicarious liability following the revelations that relate to false allegations of abuse against Lord McAlpine. This resulted in 2 employees being disciplined and moved to different jobs. However this did not protect the BBC being held accountable and paying £185,000 in damages. Following on as it did, from the complaints and allegations against the BBC that related to the late Jimmy Savile, the director general George Entwistle resigned.

Example Three

In the case of *Teggart v TeleTech UK Ltd* the employer dismissed an employee for posting offensive comments about a colleague on his Facebook page. The tribunal found that when the employee posted the comments on Facebook they became public and therefore he could not rely on his right to respect for his private life or the fact that the comments were posted outside of work. His comments constituted harassment and therefore the employment tribunal dismissed his claim for unfair dismissal.

Example Four

In the case of *Otomewo v Carphone Warehouse Ltd* two members of staff posted a status update on the claimant's facebook page, without his permission or knowledge. The status update read: "*finally came out of the closet. I am gay and proud.*" It was posted in the course of employment, the employees' actions took place during working hours and it involved dealings between staff and a manager – therefore the employer was found vicariously liable for the conduct which amounted to harassment on the grounds of sexual orientation.