

EMPLOYEE RELATIONS UPDATE – SEPTEMBER 2004

MANAGING EMPLOYEE EMAIL USEAGE

Employers may be found to be vicariously liable for the actions of an employee or agent through their use of the internet or email.

What Does the Law Say?

As employees are using the employer's computer network system and representing their employer in sending messages (using the employer's email address) responsibility lies with the employer for the employees' actions.

However, if an employer can show they have taken reasonable steps to prevent their employees or agents from breaching the law, they may be exempted from liability.

While it is common practice for employees to send jokes or pictures by email, this practice may expose an employer to risks in the areas of discrimination and sexual harassment. Legislation at both federal and state levels prohibits discrimination on the grounds of race, sex, transgender status, marital status, pregnancy, disability, sexual preference, age etc.

A successful complaint to a tribunal of discrimination or harassment by an employee further to the receipt of discriminatory material received via email or other person could result in significant damages being awarded against the employer.

Employers can also be exposed to legal claims of defamation as a result of emails sent by employees.

Getting the Message to Employees

Email education should be a priority, with regular orientation and training about appropriate use and management, ensuring workers are aware of expectations and are informed their work and correspondence may be subject to inspection.

An email policy should be given to all employees at the commencement of their employment. The employee should sign that they have read and fully understood its terms. Existing employees should sign an acceptance of new email policies when drafted.

Further Information

Should you have any questions about the above matter please email your query to admin@mjsp.org.