

Article Information

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A FIFO Tale: Tell him he's dreamin': Employer liable for sleepwalker who urinates on co-worker

A recent decision of the Queensland Court of Appeal^[1] highlights the complexity of resourcing projects in remote locations, where FIFO workers are relied on. In an environment of skilled labour shortages, proper attention should be given to the potential for worker misconduct when living away from home.

The Queensland Court of Appeal recently reignited the debate on the liability of an employer for an employee's conduct while 'working away from home'. For contractors pursuing or taking on 'remote' work, this should be a reminder to carefully consider the implications of FIFO living arrangements for workers. Employers and contractors may find themselves legally responsible for the actions of their employees and workers in circumstances usually considered to be outside their scope of control.

Mr Schokman and Mr Hewett were employed by the defendant, at the employer's resort on Daydream Island. The pair were assigned to shared accommodation by their employer (CCIG) where they lived together while they were working at the resort.

On 7 November 2016, as Schokman slept, an (apparently) intoxicated and sleepwalking Hewett assaulted Schokman in particularly unglamorous circumstances: urinating on Mr Schokman's face while he slept. This assault triggered a variety of medical conditions in Schokman, for which the court ultimately found the employer, CCIG Investments, vicariously liable.

McMurdo JA applied the test in *Bugge v Brown*,^[2] where an employee negligently started a fire, destroying nearby buildings while preparing meals. As the meals were provided by his employer, the employee's conduct was not 'entirely outside the relation of master and servant'^[3].

Here, as Hewett was required to live in the staff accommodation provided by the defendant, and comply with certain rules of conduct as a condition of his employment, Hewett occupied the room as an employee and there was 'the requisite connection between his employment and the employee's actions.'^[4]

The Queensland Court of Appeal's decision compares interestingly to the High Court's 2013 decision in *Comcare v PVYW*^[5], where an employee who sustained injuries while engaging in sexual intercourse at a motel provided by her employer, was not engaged in an activity at the time of injury induced or encouraged by the employer. There, the court held that the mere fact she was induced or encouraged to be in the motel provided by her employer did not provide the necessary connection to employment to impose liability upon the employer.

These cases illustrate that matters employers must consider before sending their workers away for remote project work include:

- that supplying out-of-hours facilities and other arrangements to employees and others can give rise to liability by employers
- Properly communicating expectations of conduct while engaged in remote work and while in employer provided accommodation. For example, staff training should identify the behaviours required 'at work' and 'after work with colleagues' so that staff understand the rules that apply when working on a project or away from home

- Making clear to workers the nature and likelihood of risks while working away from home
- Ensuring the specific terms of employment agreements properly reflect the higher standard expected of FIFO workers and others who regularly interact and live with co-workers when working away from home or on-site
- risk assessments and practical reviews of facilities and arrangements that do not strictly form part of the 'workplace', including consideration of both daytime and night-time interaction of the individuals in those environments
- implementation of all reasonably practical measures to ensure the health and safety of employees

Ultimately for contractors, this is another example of a common project delivery decision that is due more attention than it usually receives through rushed risk workshops and reactive project start-up processes. It's a complex decision contractors would do well to dwell on further, to ensure those they rely on for successfully delivering their projects are properly protected from harm.

Piper Alderman's Project & Construction Team has recognised expertise in supporting contractors carry out project planning and due diligence of project bids, including risk workshops to identify and review management of project risks. Piper Alderman's Employment Relations Team has expertise in all matters work, health and safety across industries and workplaces.

[1] *Schokman v CCIG Investments Pty Ltd* [2022] QCA 38

[2] (1919) 26 CLR 110,

[3] *Ibid*, 121.

[4] *Schokman v CCIG Investments*, [42].

[5] [2013] HCA 41.