

Sexual harassment in the world of work

IN OUR column of April 18, we dealt with the recent judgment in the Equal Opportunity Commission and Rishi Persad-Maharaj vs Cascadia Hotel Ltd case where the Court of Appeal recognised that sexual harassment can be a form of sex-based discrimination in employment that is prohibited by the Equal Opportunity Act Chap 22:03 and we said that we will treat with various aspects of this topic in further articles.

Today we will consider what constitutes sexual harassment. This topic is covered in greater detail in our Guidelines on Sexual Harassment in the Workplace which, as we noted before, is available for free download on our website.

The Australian Human Rights Commission stated that sexual harassment is an unwelcome sexual advance, an unwelcome request for sexual favours or other unwelcome conduct of a sexual nature that makes a person feel offended, humiliated and/or intimidated, where a reasonable person would anticipate that reaction in the circumstances.

Unwanted conduct is defined as any behaviour that is not requested or wanted by the victim and that is considered inappropriate. Whether it was "reasonable" for the victim to believe that he/she was sexually harassed would depend on the context in which it occurred, for example:

- * the frequency of the occurrence;
- * the seriousness and extent of the intimidation;
- * the form of its manifestation; and
- * whether a hostile and offensive working environment was created for the victim.

People typically speak of sexual harassment "in the workplace" but we prefer to



say sexual harassment "in the world of work" as many times the actions may not happen in the confines of the office. For example, it can happen:

- * While driving in a vehicle.
- * While at lunch in a restaurant.
- * While having drinks in a bar.
- * While on a trip to a conference, retreat, or presentation.

What is decisive in classifying behaviour as sexual harassment is not the location, but the unwelcome nature of the behaviour. So, for example, the vehicle does not have to be a company vehicle, in the same way the restaurant, bar or hotel is not likely going to be owned or managed by the company. The person must feel intimidated in the context of their employment.

On the other hand, interaction which is based on mutual consent is not sexual harassment. Sexual harassment does not refer to occasional compliments that are socially and culturally acceptable and appropriate.

The literature recognises two forms of harassment:

1. *Quid pro quo*: This is a Latin expression and literally means something for something. This is where the perpetrator attempts to influence the process of employment, terms or conditions of employment or other benefit of an employee or job applicant in exchange for sexual favours.

For example, the perpetrator asks for

sexual favours in exchange for a promotion, employment opportunity, being sent abroad on a conference or some benefit. Normally, this happens in the context of a vertical power relationship, that is, the perpetrator is the manager or supervisor and is in a position of power or influence over the victim so as to be able to offer these benefits.

2. *Hostile work environment*: This occurs when unwelcome comments or conduct based on sex unreasonably interfere with employees' work performance or create an intimidating, hostile or offensive work environment. Unlike *quid pro quo*, there need not be a sexual intent towards the victim.

Sexual harassment can encompass a range of behaviours and practices of a sexual nature, including, for example:

- (i) Requesting sexual favours as a condition of being hired or promoted.
- (ii) Physical harassment such as sexual violence or unwelcome physical contact.
- (iii) Verbal harassment such as offensive and sexually suggestive jokes and comments.
- (iv) Non-verbal harassment such as suggestive gestures of a sexual nature and sexually suggestive body language.
- (v) Written or graphic harassment such as displaying sexually explicit photographs and pornographic materials.
- (vi) Psychological harassment such as repeated unwanted proposals and taunts of a sexual nature.

For more information people can consult our guidelines. Additionally, people can request training and sensitisation sessions from the EOC on this topic and other aspects of discrimination, which are provided free of charge.